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No. 93-5770-CSY
Status: GRANTED
CAPITAL CASE

Title: Robert Edward Stansbury, Petitioner
v.
California

Docketed:
August 24, 1993

Court: Supreme Court of California

Counsel for petitioner: Winton, David

Counsel for respondent: Lungren, Daniel E., Scheidegger, Kent
S.

Entry	Date	Note	Proceedings and Orders
1	Aug 24 1993	P	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
4	Sep 16 1993		Order extending time to file response to petition until October 23, 1993.
5	Oct 5 1993		Brief of respondent California in opposition filed.
6	Oct 14 1993		DISTRIBUTED. October 29, 1993 (Page 18)
9	Oct 28 1993	X	Reply brief of petitioner filed.
8	Nov 1 1993		Petition GRANTED. limited to Question 3 presented by the petition. *****
10	Nov 12 1993	G	Motion of petitioner for appointment of counsel filed.
11	Nov 29 1993		REDISTRIBUTED. December 3, 1993 (Page 17)
14	Dec 2 1993		Joint appendix filed.
12	Dec 6 1993	*	Joint Appendix in two volumes Motion for appointment of counsel GRANTED and it is ordered that Robert M. Westberg, Esquire, of San Francisco, California, is appointed to serve as counsel for the petitioner in this case.
16	Dec 13 1993		Brief amicus curiae of Orange County District Attorney filed.
17	Dec 13 1993		Brief amicus curiae of Americans for Effective Law Enforcement, Inc. filed.
15	Dec 15 1993		Brief of petitioner Robert Stansbury filed.
18	Dec 20 1993		Record filed.
20	Jan 13 1994		Original proceedings Supreme Court of California (3 BOXES) (2 SEALED ENVELOPES)
19	Jan 14 1994		Brief of respondent California filed. Brief amicus curiae of Criminal Justice Legal Foundation filed.
21	Feb 2 1994		SET FOR ARGUMENT WEDNESDAY, MARCH 30, 1994. (2ND CASE).
22	Feb 7 1994		CIRCULATED.
23	Feb 15 1994	X	Reply brief of petitioner Robert Stansbury filed.

2

ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

2

October Term, 1993

93-5770

File

ROBERT EDWARD STANSBURY

Petitioner,

vs.

STATE OF CALIFORNIA

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

AND

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ROBERT EDWARD STANSBURY

Petitioner,

vs.

STATE OF CALIFORNIA

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 39 of the Rules of this Court, petitioner Robert Edward Stansbury requests leave to file the attached petition for a writ of certiorari without prepayment of costs, and to proceed in forma pauperis. Petitioner has been granted leave to so proceed in both the Superior Court of the State of California and the Supreme Court of the State of California.

Petitioner's declaration in support of this motion is attached hereto.

Dated: August 24, 1993

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ROBERT EDWARD STANSBURY

Petitioner,

vs.

STATE OF CALIFORNIA

Respondent.

DECLARATION OF PETITIONER ROBERT EDWARD STANSBURY
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

I, Robert Edward Stansbury, declare that I am the petitioner in the above-entitled case; that in support of my motion to proceed in this matter without being required to prepay fees, costs or give security therefor, I state that, because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor; and I believe I am entitled to redress.

I further declare that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the proceeding in this Court are true:

1. Are you presently employed? NO
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. _____
 - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
September 28, 1982
around \$75.00 per day
2. Have you received within the past twelve months any income from a business, profession or other form of self employment, or in the form of rent payments, interest, dividends or other source?
 - a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?
NO
 - a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? YES!

- a. If the answer is yes, describe the property and state its approximate value.

a 13 inch T.V. and a small
\$17.00 radio and a set of headphones.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

none

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Quentin, California this 12 day of August, 1993.

Robert E. Stansbury
Robert E. Stansbury

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QUESTIONS PRESENTED

1. Where a defendant representing himself in a capital case has advised the trial court that he intends to stand mute at trial, may the court, consistent with Faretta v. California, 422 U.S. 806 (1975), force the defendant to "participate" by threatening to revoke his self-representation, for the stated reason that standing mute would be risky and "tantamount to a conviction of yourself," without finding that the defendant is deliberately engaging in disruptive or otherwise improper tactics?

2. Where a defendant competent to do so is representing himself in propria persona and states that he intends to stand mute at trial, may his Faretta rights be revoked on the ground that he does not "sincerely" believe that standing mute would be his best defense?

3. May a trial court determine that a criminal defendant is not "in custody" for Miranda purposes on the basis of the police officers' subjective and undisclosed conclusions that they did not consider the defendant a "suspect"?

LIST OF PARTIES

The parties to the proceedings below were the petitioner Robert Edward Stansbury and the respondent State of California.

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No. _____

IN THE
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October Term, 1993

ROBERT EDWARD STANSBURY

Petitioner,

vs.

STATE OF CALIFORNIA

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Petitioner Robert Edward Stansbury respectfully prays
that a writ of certiorari issue to review the judgment and
opinion of the Supreme Court of the State of California
entered in the above-entitled proceeding on March 8, 1993.

OPINION BELOW

The opinion of the Supreme Court of the State of
California is reported at 4 Cal. 4th 1017, 17 Cal. Rptr. 2d
174, 846 P.2d 756 (1993) and is reprinted in Appendix A

hereto. That court's May 26, 1993 order modifying its opinion and denying rehearing is reported at 5 Cal. 4th 294D (1993) and is reprinted in Appendix B hereto.

JURISDICTION

The judgment of the Supreme Court of the State of California affirming petitioner's death sentence was entered on March 8, 1993. The California Supreme Court modified its opinion and denied rehearing on May 26, 1993. This petition was timely filed within 90 days of that date. 28 U.S.C. § 2101(c); Sup. Ct. Rules 13.1, 13.4. This Court has jurisdiction to review the judgment and opinion of the Supreme Court of the State of California by writ of certiorari pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V, provides, in relevant part:

"No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

United States Constitution, Amendment VI, provides, in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

United States Constitution, Amendment XIV, Sec. 1, provides, in relevant part:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner Robert E. Stansbury was convicted of first degree murder, kidnapping, rape and lewd and lascivious acts upon the person of a child under the age of fourteen. The jury found true special circumstance allegations that the murder was committed "while engaged in" the commission of rape, kidnapping and lewd and lascivious acts. The jury also found true allegations that petitioner had inflicted great bodily injury in connection with the noncapital offenses and that petitioner committed the offenses while on parole. The jury sentenced petitioner to death.

Petitioner's appeal was heard in the first instance by the Supreme Court of the State of California, which affirmed petitioner's convictions and sentence in all respects. Justice Kennard, indicating that she disagreed with the majority's view as to the trial court's power to terminate petitioner's self-representation, concurred in affirming petitioner's convictions solely "on the basis of stare decisis" (Appx. A, Kennard, J., citing her dissenting opinion in People v. Clark, 3 Cal. 4th 41, 10 Cal. Rptr. 2d 554, 833 P.2d 561 (1992), cert. denied, 113 S. Ct. 1604 (1993)). Justice Mosk dissented from the affirmance of the death sentence.

A. Statement of facts.¹

On September 28, 1982, Robyn Jackson, age 10, was reported missing from a playground near her home in Baldwin Park, California. Early the next morning, police discovered Jackson's body in a drainage channel in Pasadena, California, after a witness reported observing a passing motorist throw something into the channel. Later that day, petitioner, who drove an ice cream truck in Jackson's neighborhood, was arrested and charged with her murder following an un-Mirandized interview at the Pomona, California, police station.

Facts relevant to the Faretta issue: The Los Angeles County Public Defender represented petitioner from his arrest on September 29, 1982 until July 7, 1983, when the public defender asked to be relieved because of a conflict of interest. A private attorney, David Daugherty, was appointed to represent petitioner on that date. RT A48-A50 CT 154.² A second private attorney was later appointed to assist Daugherty. RT A122-A123.

From the very beginning of the case petitioner sought to assert control over his defense because he believed that appointed counsel were not investigating or preparing the

1 The factual record in this case is lengthy and complex. This petition discusses only those facts relevant to the issues presented for review.

2 "RT" references are to the reporter's transcript of the proceedings in the trial court. "CT" references are to the clerk's transcript on appeal, consisting of the pleadings and other papers filed in the trial court.

defense he wanted to present. In September 1983, petitioner requested "co-counsel" status so that he could "have a say in the actual presentation of the case at trial." RT A56; CT 155-159. This motion was denied (RT A60-A63; CT 160), but petitioner was granted "pro. per. privileges" in jail. RT A63.

By a series of proceedings beginning May 7, 1984 and running through August 2, 1984, petitioner sought and obtained permission to represent himself, with his appointed attorneys as assistant counsel. See RT 27-31, 45-58, 80-81. In the course of these proceedings, petitioner requested and received from the trial court express assurances that he would be his own "chief counsel," and that he would have the "right to make any and all final decisions in the matter" (RT 52-53), "regardless of how foolish they may be." RT 53; see also RT 63, 81. The trial court later reaffirmed that petitioner was to have complete control over "what strategy to proceed [with] in the defense." RT 2481-2482.

At the commencement of jury selection in January 1985, petitioner informed the trial court that he intended to "remain mute throughout the trial" and would "refrain from attempting to put on a defense." RT 4098, 4101; see also RT 4123-4124, 4132, 4154-4155, 4159-4161. Petitioner pointed out that, if he stood mute and did not participate in the trial, the jury would "need to listen somewhat closer" to the evidence presented by the prosecution, and therefore would be more likely to notice "how weak [the

prosecution's] case" was. RT 4160-4161.³ Petitioner also explained that he did not wish to present the defense prepared by assistant counsel Daugherty, that he believed that the court's prior rulings on numerous matters had been erroneous and would give him grounds for reversal on appeal (RT 4154-4155), and that his chances of success on appeal and on any retrial were greater if he stood mute. RT 4098-4099, 4169, 4174-4176, 4252.⁴

3 Petitioner informed the court that, if he were allowed to stand mute, he would ask the court to instruct the jury that "the defendant can refuse to present a defense if in his mind he feels that there is no need to present a defense because he is innocent until proven guilty and that he does not feel the prosecution can prove him guilty." RT 4160. Such an instruction, which rests upon "that bedrock 'axiomatic and elementary' principle" that a criminal defendant is presumed innocent (*In re Winship*, 397 U.S. 358, 363 (1969)), would not have been without support. As one court has observed:

"[U]nder our system of jurisprudence, it is technically possible for a criminal defendant to enter a plea of not guilty, introduce little or no evidence in his own defense and rely exclusively on his presumption of innocence and the possible inability of the prosecution to prove his guilt beyond a reasonable doubt". *United States v. England*, 347 F.2d 425, 431 (7th Cir 1965).

4 Assistant counsel Daugherty confirmed that petitioner believed he had "a better chance for appeal" if he remained mute and relied on the court's prior rulings:

"[MR. DAUGHERTY:] I think what he indicated to me, by himself he will not be able to truly present a defense in this case. Many parts of the case he cannot handle.

"That being the case, he may as well remain totally mute. Since he can handle only a bit of it anyway, he has a better chance for appeal in that regard." RT 4174.

The record indicates that the trial court viewed petitioner's stated intention to "sit mute [and] not participate" (RT 4101) as "tantamount to a conviction of [him]self." RT 4159. The record does not suggest, however, that the court found petitioner guilty of disruptive or obstructionist tactics. Indeed, shortly after petitioner had informed the court of his intention not to participate in the trial, the court indicated that it did not think that petitioner had acted improperly during the proceedings:

"[THE COURT:] I'm not suggesting that you conducted yourself improperly. Based on your education and experience and your interest in this matter I haven't seen that you've done anything improper. I question some of your motions, but I haven't seen any improper activity and I'm not suggesting that." RT 4122-4123 (emphasis added).⁵

Despite the court's statement that petitioner had not conducted himself improperly (RT 4122, 4148), and notwithstanding its repeated assurances that petitioner would have complete control over defense tactics and strategy (e.g., RT 53, 63, 2451, 2469, 2471, 2475, 2481-2482), the court refused to allow him to stand mute. The court warned petitioner that, unless he actively participated in his defense, the court would "relieve [him] of [his] pro. per status" and direct assistant counsel Daugherty to present the defense that Daugherty had prepared. RT 4158. The court explained

5 In addition, in the course of instructing defendant on his rights and responsibilities as a *pro se* litigant, which took place shortly after petitioner had informed the court of his desire to stand mute (RT 4098, 4101, 4137) the court further stated: "I expect you to conduct yourself with courtesy, with the dignity that you've expressed or used thus far." RT 4148 (emphasis added).

that it believed standing mute was not a "legitimate tactic," that such a course of action would likely result in petitioner's conviction, and that the court would "become a party to that risk" if it permitted petitioner to pursue his intended strategy:

"[THE COURT:] If you are going to stand mute and rely on my previous rulings at this point, up to this point in the trial, I would not allow you to do that. I think it would be irresponsible for me to allow you to stand mute and let the people present the kind of evidence I know they will present." RT 4167 (emphasis added).

* * * * *

"I think what you're doing is tantamount to a conviction of yourself, and I think that the district attorney can posture his case so that you have no rights on appeal or very few rights." RT 4159 (emphasis added).

And,

"I think that the risk you take is substantial and I think I become a party to that risk if you did elect to sit back and not take any steps to represent or defend yourself." RT 4162 (emphasis added); see also RT 4124, 4127, 4170, 4173, 4181.

After further discussion, the court reiterated that it was "insisting" that petitioner attempt to present a "fair" defense (RT 4167), and that the court "would not allow" petitioner "to stand mute and rely on [the court's] previous rulings at this point, up to this point in the trial." Ibid.

Petitioner argued to the trial court that, under Faretta v. California, 422 U.S. 806 (1974), he had a right not to present a defense (RT 4181), and that standing mute

was a legitimate tactic that he believed constituted an effective strategy under the circumstances:

"[PETITIONER STANSBURY:] Not representing myself is still representing myself. I have made that election, and I have felt that's the best tactic to take at this time; that is a trial tactic on the part of myself as a pro per inmate." RT 4180 (emphasis added).

The court, however, reaffirmed that if petitioner "elect[ed] not to represent [himself], Mr. Daugherty will step in and do it. That's clear." RT 4179-4180.

On the following day, the trial court issued its ultimatum that petitioner would not be permitted to conduct his defense by nonparticipation:

"[THE COURT:] [I]f you announce to me now that you're going to stand mute during this trial and not present any defense, not cross-examine any witnesses without considering what the evidence might be, then I am going to replace you, your pro per status and appoint Mr. Daugherty." RT 4253 (emphasis added).

Faced with this threat, from which the court never retreated, petitioner did not stand mute.

The trial court threatened a second time to revoke petitioner's in propria persona status when petitioner stated at the close of the People's case at the guilt phase that he wished to rest the defense. The court told petitioner that he would not be permitted to rest the defense, and warned him that, unless he proceeded to call witnesses, the court would terminate his self-representation and place assistant counsel Daugherty in control of the case.

RT 8742, 8747-8748.⁶ Following this admonition, petitioner proceeded to call his witnesses.⁷

Facts relevant to the Miranda issue: An investigation by the police officers assigned to the Jackson case led them to conclude that Jackson had been seen with an ice cream truck driver shortly before she disappeared. RT 2087, 2251. Homicide investigators identified two drivers in the area, one of whom was petitioner. RT 2063, 2093-2094.

Shortly before 11 P.M. on September 29, 1982, four police officers arrived in two cars at the mobile home in which petitioner was living. The officers drew their guns, fanned out around the doorway, and knocked on petitioner's

6 The court admonished petitioner that:

"[THE COURT:] Several times during this trial when things haven't gone exactly your way, you begin to withdraw and you get upset and you indicate you're not going to participate.

"That's like shooting yourself in the foot. I mean you understand its your trial, and you are able to conduct this any way you want to.

"If you decide you don't want to proceed with your witnesses, then we'll--I'll instruct Mr. Daugherty to proceed with the defense that was originally scheduled by the attorneys that were going to present a defense in this case.

"But that's a decision you have to make."
RT 8742 (emphasis added); see also RT 8749-8750.

7 In contrast to its insistence that petitioner present a defense during the guilt phase, the trial court refused to intercede at the penalty phase even though petitioner attempted to compel a death verdict by presenting no mitigating evidence or argument against imposition of the death penalty. See RT 11779-11781, 11893, 11929. Thus, the penalty issue went to the jury solely on the prosecution's case in aggravation.

door. RT 2049-2051. When petitioner answered, one of the officers asked him to identify himself and, after he had done so, asked him to come to the Pomona, California police station for questioning. RT 2033-2034, 2048-2052, 2058, 2179-2181. The officers informed petitioner that if he did not have transportation it would be provided for him. RT 2052. No witness testified, however, that petitioner was told that he could refuse to go to the station. When petitioner agreed to accompany the officers, they drove him to the station in an unmarked police car, followed by a marked police car. RT 2031, 2037, 2051-2053, 2327.

Upon arriving at the police station, petitioner was taken through the sally port directly into the jail area. RT 2039, 2056-2057, 2096-2097, 2341. Four officers then escorted petitioner through several locked doors into a small interview room normally used for questioning suspects and persons in custody. 2039, 2056-2057. The door to this room could not be opened without a key. RT 2056-2057, 2224, 2340-2345.

Petitioner was interrogated by Lieutenant Johnston of the Los Angeles County Sheriff's Department and an officer from the Baldwin Park Police Department. RT 2067, 2103. Neither officer informed petitioner of his Miranda rights before he was interrogated, nor did they testify that they informed him that he was free to leave. Johnston asked petitioner to account for his whereabouts and movements during the entire day on which Robyn Jackson disappeared.

RT 2068-2076, 2108-2111. In response to Johnston's questions, petitioner described his route of travel and activities on that date, both before and after Jackson had disappeared. RT 2069-2076, 2107-2111.

According to Johnston, petitioner became a "suspect" in the murder when, after approximately 30 minutes of questioning, petitioner mentioned that he had access to a car matching the description of the vehicle from which Jackson's body had been thrown. RT 2070-2071, 2077-2078, 2135, 2227. The officers then asked petitioner if he had a prior criminal record. When petitioner replied affirmatively, the officers broke off the interview, read him his Miranda rights and, when he asked for a lawyer, arrested him. RT 2079-2081, 2124, 2232.⁸

⁸ In the prosecution's case in chief, the interrogating officers testified as to their recollection of what petitioner had said during his un-Mirandized interrogation about his movements and activities on the day of Jackson's disappearance. RT 8293-8301, 8399-8402. The jury was instructed that it could consider alleged inconsistencies between petitioner's testimony and the officers' version of his un-Mirandized statements as proof of a consciousness of guilt (RT 11174-11175), and the prosecution vigorously urged the jury to draw such an inference. RT 11424-11429, 11431, 11445, 11447. Further, petitioner's un-Mirandized statements directly led the police to the only eyewitness who claimed to have seen Jackson in petitioner's presence after her disappearance. Indeed, one of the officers testified that she located this witness only "as a result of the information" acquired from petitioner during his un-Mirandized interrogation. RT 2219-2220.

B. Presentation and disposition of the federal questions.

1. The Faretta issue.

The question whether petitioner had a Sixth Amendment right to represent himself by standing mute was raised in the trial court when petitioner attempted to stand mute and was informed by the court that such a course of action would result in revocation of his in propria persona status. See, e.g., RT 4098, 4104, 4154-4161, 4167, 4174-4180. Petitioner asserted specifically that, under Faretta, he had a right to stand mute and not actively participate in the trial. RT 4181.

On direct appeal to the California Supreme Court, petitioner argued that the trial court had violated his Faretta rights by, among other things, threatening to terminate his self-representation when he stated his desire to stand mute. The California Supreme Court determined that "[t]he record supports the conclusion that [petitioner] lacked a sincere desire not to participate in his defense at the guilt phase of the trial." Appx. A, p. 25. The court concluded that, because the trial court "justifiably thought that [petitioner] was being manipulative, and that his desire to stand mute was not a sincere decision that this would be the best defense, but an effort to interject error and delay into the proceedings," the trial court acted properly in threatening to revoke petitioner's right of self-representation. Appx. A, p. 30; see id. at 21-30.

2. The Miranda issue.

Prior to trial, petitioner filed a motion to exclude his un-Mirandized statements and any evidence discovered as a direct result of those statements. CT 290-305; RT 2217-2219. After a two-day evidentiary hearing, at which petitioner did not testify, the trial court excluded only those statements petitioner made after he described the vehicle to which he had access on the night of the crime. The trial court determined that, because petitioner had not become the "focus" of the interrogating officers until he described the vehicle, he was not "in custody" for Miranda purposes before that time. RT 2367-2369.⁹

In the California Supreme Court, petitioner argued, among other things, that the trial court applied an incorrect standard for determining whether he had been in custody by focusing exclusively on the time at which he became a suspect in the minds of the officers. In holding that the trial court properly refused to suppress petitioner's un-

⁹ In determining that petitioner was in custody for Miranda purposes only when he became the "focus" of the interrogating officers' suspicions, the trial court ignored the substantial objective indicia of custody: Petitioner, a recently released parolee, was accosted at his home late at night by four police officers with drawn guns, was brought, in a police car, to a locked interview room in a secured area of the local jail, and was questioned extensively about his whereabouts and activities on the day Jackson disappeared. RT 2035-2038, 2051-2053, 2079, 2096, 2102-2111, 2181-2182, 2341-2342. No witness testified that petitioner was informed that he could refuse to go to the station or to answer questions. See RT 2103-2106, 2201, 2211, 2214. Thus, petitioner was interrogated in the "incommunicado, police-dominated atmosphere" in which Miranda warnings are necessary. Miranda v. Arizona, 384 U.S. 436, 456 (1966).

Mirandized statements, the California Supreme Court endorsed the standard applied by the trial court for determining the question of custody:

"The trial court's determination that suspicion focused on defendant only when he mentioned that he had driven a turquoise car on the night of the crime is supported by substantial evidence. All the police officers involved testified that defendant was not considered a suspect until that point in the interview." Appx. A, pp. 42-43 (emphasis added).

REASONS FOR GRANTING REVIEW

- I. THIS COURT SHOULD GRANT CERTIORARI TO MAKE CLEAR THAT THE SIXTH AMENDMENT RIGHT OF SELF-REPRESENTATION MAY NOT BE DENIED OR REVOKED BASED ON A TRIAL COURT'S UNEXPRESSED VIEW THAT THE DEFENDANT IS NOT "SINCERE" IN HIS CHOICE OF TRIAL TACTICS AND STRATEGY.

This Court held in Faretta v. California, 422 U.S. 806 (1975) that "'the right of the accused personally to manage and conduct his own defense in a criminal case'" is implicit in the Sixth Amendment. "[T]he core of the Faretta right" is that the defendant be allowed to "preserve actual control over the case he chooses to present to the jury;" he must be given "a fair chance to present his case in his own way." McKaskle v. Wiggins, 465 U.S. 168, 177, 178 (1984). Under Faretta, a self-represented defendant may conduct his defense in any lawful manner he deems appropriate, as long as he does not "abuse the dignity of the courtroom" or

"deliberately engag[e] in serious and obstructionist misconduct." Faretta, 422 U.S. at 834-835, n.46.

As this Court declared in McKaskle, "[t]he right to appear pro se exists to affirm the accused's individual dignity and autonomy" rather than to ensure that the most effective defense will be presented. McKaskle, 465 U.S. at 178. Indeed, "[i]t is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts." Faretta, 422 U.S. at 834.¹⁰ Nevertheless, as long as a defendant's election to proceed without counsel is made "knowingly and intelligently" (id. at 835), his choice "must be honored out of 'that respect for the individual which is the lifeblood of the law.'" Id. at 834, quoting Illinois v. Allen, 397 U.S. 337, 350-51 (1970) (Brennan, J., concurring).

While this Court has never so held, several federal courts of appeals have determined that the Sixth Amendment right of self-representation recognized by Faretta includes the right to stand mute:

"The Faretta court assumed that the overwhelming majority of laymen who defend themselves in a criminal action will fare worse than those represented by skilled counsel. Nonetheless, just as it is the accused's right to plead guilty or nolo contendere to the charges against him, it is equally an accused's personal constitutional right to face the charges alone, either by standing mute and forcing the state to its proofs or by

¹⁰ For this reason, harmless error analysis is inapposite when the Faretta right is improperly denied; the erroneous denial of the right to self-representation is prejudicial per se. McKaskle, 465 U.S. at 177, n.8; Savage v. Estelle, 924 F.2d 1459, 1466 (9th Cir. 1990).

attempting to defend himself. The only condition on this right is that it be asserted by the accused with his 'eyes open.'" United States v. McDowell, 814 F.2d 245, 250 (6th Cir.), cert. denied, 484 U.S. 980 (1987) (emphasis added in part).

Moreover, in previous cases, the California Supreme Court itself recognized that "[t]he choice of self-representation preserves for the defendant the option of conducting his defense by nonparticipation." People v. McKenzie, 34 Cal. 3d 616, 628, 194 Cal. Rptr. 462, 668 P.2d 769 (1983); accord People v. Teron, 23 Cal. 3d 103, 108, 151 Cal. Rptr. 633, 588 P.2d 773 (1970). As that court has observed, even "a capital defendant representing himself under Faretta has no duty to 'present a defense' but may simply 'put the state to its proof'." People v. Chadd, 28 Cal. 3d 739, 750, n.7, 170 Cal. Rptr. 798, 621 P.2d 837 (1981).

In the case at bar, however, the California Supreme Court departed from this view, holding that, where a pro se defendant states his intent to stand mute, self-representation may be terminated if the defendant does not "sincere[ly]" believe that standing mute would be "the best

¹¹ Accord Savage v. Estelle, 924 F.2d 1459, 1464 n.10 (9th Cir. 1990) ("under Faretta, a defendant is entitled to 'stand[] mute and forc[e] the state to its proofs'"); United States v. Clark, 943 F.2d 775, 782 (7th Cir. 1991) (quoting McDowell); see also United States v. Morrissey, 461 F.2d 666, 669 (2d Cir. 1972) (in a case predating Faretta, the court did not find that the pro se defendant engaged in obstructionist behavior, even though he "stood 'mute'" during the latter portion of the trial and "refused to cross-examine government witnesses, present a defense in his own behalf or make a summation").

defense" or that he had "no defense." Appx. A, pp. 26-27. The court below appears to have determined that, because petitioner "said he wanted to present a defense" and "had a particular defense strategy in mind," petitioner's stated intent to stand mute was "insincere and manipulative." Appx. A, pp. 24, 25, 27-30. The court concluded that:

"[W]e think that the court retains authority to determine whether defendant's expressed desire to stand mute is sincere, or whether it is an attempt to coerce the court. Here, * * * defendant's reason for standing mute was not that he had no defense, or that he thought silence was the best defense, but that he was not pleased with the way things were going and thought he was sure to get a second trial where things would go his way. We see no error in a court refusing to permit a defendant to stand mute at trial, when that defendant is attempting to manipulate the legal system while operating under such a basic misapprehension." Appx. A, pp. 26-27 (emphasis added).¹²

¹² The court below relied on its earlier decision in *People v. Clark*, 3 Cal. 4th 41, 10 Cal. Rptr. 2d 554, 833 P.2d 561 (1992), in which the trial court terminated the defendant's right of self-representation upon determining that the defendant, who had attempted to stand mute in the middle of trial, "was merely 'playing games with the court'" and had "'abused the dignity of [the] court and the privilege'" of representing himself. 3 Cal. 4th at 96, 114, 10 Cal. Rptr. 2d at 579, 591, 833 P.2d at 586, 598. The California Supreme Court concluded in *Clark* that, because the defendant's threat to stand mute was not "a conscious decision to simply force the prosecution to its proof," but rather was "part of a deliberate course of conduct designed to cause as much disruption as possible," termination of his self-representation was not constitutionally impermissible. 3 Cal. 4th at 116, 10 Cal. Rptr. 2d at 592, 833 P.2d at 600.

Here, unlike in *Clark*, there is nothing in the record which demonstrates that, at the time the trial court threatened to revoke petitioner's *in propria persona* status during jury selection, the court believed that petitioner had "'abused the dignity of [the] court'" or intended to disrupt the proceedings by standing mute. See *supra*, p. 7. In any event, to the extent that *Clark* may be read to hold that the trial courts may terminate self-representation upon

(continued...)

The California Supreme Court's opinion permits a trial court to second-guess the wisdom of a *pro se* defendant's tactical decisions, contrary to *Faretta* and its progeny. If it is constitutionally impermissible for a court to terminate a defendant's *in propria persona* status merely because the court believes that defendant's exercise of his right of self-representation will work to his detriment--and *Faretta* holds that it is--then it follows that a court may not prevent such a defendant from adopting any nondisruptive defense strategy, including standing mute, whether or not the defendant "sincerely" believes that his chosen strategy is his "best defense." Once a defendant has validly invoked the right of self-representation, any inquiry into the "sincerity" or efficacy of his tactics constitutes intolerable interference with "the dignity and autonomy of the accused" that the Sixth Amendment is intended to promote. *McKaskle*, 465 U.S. at 177.

Moreover, the California Supreme Court's ruling that the trial court "justifiably thought" that petitioner did not "sincere[ly]" desire to stand mute but rather was trying to "interject error and delay into the proceedings" (Appx. A, p. 30) is an assumption that is not supported by the trial court's statements. The opinion below would thus appear to allow the denial or revocation of the right of

¹²(...continued)
determining that a defendant's selection of strategy is not "sincere," we submit that it is based on a misreading of *Faretta* for the reasons stated in this petition.

self-representation to rest on a post hoc evaluation by the reviewing court of the defendant's "sincerity." Under Faretta, however, any inquiry into the "sincerity" of a pro se defendant's chosen strategy, whether by the trial court or by the reviewing court, is an impermissible intrusion on the dignitary interests protected by the Sixth Amendment.¹³ This Court should grant certiorari to address this important question.

¹³ The notion that standing mute, by itself, can "interject error and delay into the proceedings" or "coerce the court" (Appx. A, pp. 21, 26, 30) does not withstand analysis. As Justice Kennard aptly observed in her dissenting opinion in People v. Clark:

"[I]t is difficult to conceive how the act of standing mute, which carries with it no coercive power, could have injected error into the record or pressured the trial court into reversing its rulings." 3 Cal. 4th at 178, 10 Cal. Rptr. 2d at 634, 833 P.2d at 641 (Kennard, J., dissenting).

Once a defendant has validly elected to represent himself, he may not challenge his conviction on the ground that "the quality of his own defense amounted to a denial of 'effective assistance of counsel.'" Faretta, 422 U.S. at 835, n.46. Thus, the trial court's acquiescence in a pro se defendant's desire to stand mute could not provide a basis for reversal on appeal.

Nor would allowing petitioner to stand mute have delayed the proceedings; to the contrary, it would have expedited them. "Obviously, trial time is shortened considerably when the defense does not cross-examine prosecution witnesses and calls no defense witnesses." People v. Clark, 3 Cal. 4th at 177, 10 Cal. Rptr. 2d at 633, 833 P.2d at 640 (Kennard, J., dissenting).

II. THIS COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER A TRIAL COURT MAY PROPERLY DETERMINE THAT A DEFENDANT IS "IN CUSTODY" FOR MIRANDA PURPOSES ON THE BASIS OF POLICE OFFICERS' SUBJECTIVE AND UNDISCLOSED CONCLUSIONS THAT THEY DID NOT CONSIDER THE DEFENDANT A "SUSPECT".

The procedural safeguards outlined in Miranda v. Arizona, 384 U.S. 436 (1966) are required whenever a person is subjected to "custodial interrogation," that is, "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Id. at 444. This Court has held that the test for determining "custody" is an objective one: whether a reasonable person in the suspect's position would feel that his freedom of action has been significantly curtailed. Berkemer v. McCarty, 468 U.S. 420, 442 (1984); see also United States v. Bengivena, 845 F.2d 593, 596 (5th Cir.), cert denied, 488 U.S. 924 (1988); United States v. Streifel, 781 F.2d 953, 959 (1st Cir. 1986).

The opinion below departs from this objective standard by focusing on the subjective and undisclosed intent of the interrogating officers as asserted in their testimony at trial. Thus, the opinion concludes that petitioner was not in custody because the officers who brought petitioner to the police station "had not been told that [petitioner] was

a suspect" but rather "considered [him] merely a potential witness;" because "[n]either of [the interrogating officers] considered [petitioner] to be in custody;" and because the police officers testified that they would not have arrested petitioner had he refused to accompany them to the police station for questioning and "would have let him go during questioning if he had so requested." Appx. A, pp. 40, 41, 43.

It is undisputed that the officers' conclusions regarding petitioner's status as a "witness" and his freedom to refuse to submit to questioning or to leave the police station were never communicated to him. No officer (or any other witness) testified that petitioner was ever informed that he was not a suspect, that he was free to refuse to accompany the police to the station, that he could decline to answer questions at the jail, or that the police would return him to his home if he sought to end the interrogation. See RT 2103-2106, 2201, 2211, 2214. The officers' undisclosed conclusions provide no basis for an objective determination that petitioner was not "in custody." As this Court has observed:

"A policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." Berkemer, 468 U.S. at 442.

The California Supreme Court's opinion notes that, because petitioner did not testify at the suppression hearing, "there is no evidence that he felt that he could

not ask to leave [the police station] at any point," or that he otherwise "felt under restraint" during the encounter. Appx. A, pp. 43, 45. The opinion thus appears to create the rule that, where a defendant does not testify as to his own perceptions during a police encounter, the determination of the issue of custody may be based on the officer's subjective and unarticulated intent and his undisclosed conclusions about the defendant's involvement in the crime. This standard cannot be reconciled with the McCarty test: "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." 468 U.S. at 442 (emphasis added). This Court should grant certiorari to address this important question.

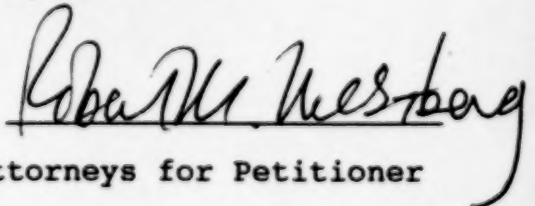
CONCLUSION

For the foregoing reasons, petitioner respectfully prays that this Court grant the writ of certiorari.

Dated: August 24, 1993.

Respectfully submitted,

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By 
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MAR 8 1993

Robert Wandruff Clerk

DEPUTY

C O P Y

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT EDWARD STANSBURY,

Defendant and Appellant.

S004697

Super.Ct. No. A529247

BY THE COURT:

Defendant Robert Edward Stansbury was convicted by jury of the first degree murder (Pen. Code, § 187)^{1/} of Robyn Jackson; lewd act on a child under the age of 14 (§ 288(b)); rape (§ 261(2)); and kidnapping (§ 207). The jury found true three special circumstance allegations: murder in the commission of a kidnapping (§ 190.2, subd. (a)(17)(ii)); murder in the commission of rape (§ 190.2, subd. (a)(17)(iii)); and murder in the commission of a lewd act on a child (§ 190.2(17)(v)). The jury also found true allegations that defendant had inflicted great bodily injury in connection with the noncapital offenses (§§ 1203.075, 12022.7, 12022.8) and that defendant committed the offenses while on parole (§§ 1203.085(a), 3000).

^{1/} All further statutory references are to the Penal Code unless otherwise noted.

= SEE CONCURRING AND DISSENTING OPINIONS =

The jury fixed the penalty at death. This appeal is automatic. We conclude that we should affirm the judgment in its entirety.

I. FACTS

A. Guilt Phase

1. Prosecution Case

On September 28, 1982, defendant, a tall red-headed man with a beard, drove an ice cream truck on a sales route around the Baldwin Park neighborhood of Los Angeles. He accidentally drove the truck into a fence around 5 p.m. and he cooperated with the property owner in trying to fix the fence. The owner observed nothing wrong with defendant's truck; it appeared to operate normally. Defendant left the scene between 5:30 and 5:45 p.m. A competing ice cream truck driver also saw defendant in the neighborhood that afternoon, and again, his truck appeared to be functioning well and traveling at speed.

Robyn went to the Geddes School in Baldwin Park around 6 p.m. that evening. A neighbor saw a white ice cream truck near the school about that time, and the neighbor's son saw Robyn talking to the ice cream truck driver in front of the school. The boy looked away, and when he looked back, Robyn was not to be seen and the truck was making a U-turn and driving away. He identified the driver as a man with red

hair and a beard. The child said that Robyn often talked to the ice cream truck driver and, unlike any of the other neighborhood children, received gifts of candy and ice cream from him. He identified a picture of defendant as he looked with long hair and a beard as the driver of the ice cream truck Robyn frequented.

Beverly Allen, a gas station attendant, saw a large white ice cream truck arrive at her station about 6:30 p.m. on September 28, 1982. Her Sears U.S.A. gas station was located in Covina, and she saw the truck arrive from the east on Arrow Highway. She saw a young man (not defendant) with blond hair buy gas and ask someone in the truck to be dropped off by the freeway. Mrs. Allen saw defendant standing by the passenger door of the truck, and observed Robyn inside, looking unhappy. Mrs. Allen was somewhat uncertain about her identification of defendant.

Defendant did not return to his home in Pomona until 9 p.m. that evening. He borrowed his roommate's turquoise automobile around midnight, first driving it next to his truck for a few minutes. He returned around 3 a.m.

About 1:15 a.m. Andrew Zimmerman saw the turquoise car in Pasadena. He saw a big man get out of the car, the door of which made a memorable popping sound, and throw something in a flood control channel. Mr. Zimmerman telephoned the police, who arrived about 1:30 to discover the body of Robyn in the flood control channel. Mr. Zimmerman

positively identified defendant's roommate's car as the one he had seen that night.

There was medical evidence that before her death, Robyn had been put in a cold, oxygen-deprived environment, such as an ice cream freezer. There was evidence of a rape, and there was evidence of saliva deposited by a nonsecretor on the victim's genital area and nipple. The victim was a secretor; defendant, like only 20 percent of the population, was not. The cause of death was asphyxia complicated by blunt force trauma to the head. The coroner was of the opinion that Robyn died when her head struck the concrete floor of the flood control channel.

Defendant spoke to the police on the night after the crime, and said he had seen Robyn the day before about 6 p.m. He said he left her about that time, and continued his route. He said his truck had not been operating properly, and he had been compelled to take a circuitous route home via the Arrow Highway, to avoid hills. He said he stopped for gas at an off-brand station on the Arrow Highway. He explained that he spent the evening watching television and dozing, and that when he woke around midnight, he borrowed his roommate's car to go get something to eat at the Sambo's restaurant on Indian Hill Boulevard in Claremont. A waitress who worked at that restaurant and was familiar with defendant testified that he had not been there that night.

A Los Angeles County jail inmate testified that defendant told him he had offered a little girl some ice cream or candy to get her to go around and sell his wares with him. Defendant said he was being charged with the murder of this little girl.

2. Defense Case

Defendant testified in his own behalf. He confirmed that he had been in the Baldwin Park neighborhood on September 28, 1982. His ice cream truck developed engine trouble in midafternoon. He saw Robyn around 6:15, when she asked him for candy. He often gave free candy or ice cream to poor children. He left her by the Geddes School, and continued on his route, making a few more sales. Then he headed home, traveling between five and seven miles per hour. He did not go home via Arrow Highway, as he admitted he had previously told the police, but by another route. He bought gas at a Shell station on Azusa Avenue, not at Beverly Allen's Sears U.S.A. station. It was stipulated that a receipt for gas bought at this Shell station on that date was found in his ice cream truck.

Defendant testified that he returned home around 9 p.m., and when his roommate awoke him around midnight, asked to borrow the roommate's car. He pulled the car out, stopped near his truck for cigarettes, then went to the Sambo's restaurant on Central Avenue in Chino. He denied telling the

police he had gone to the Sambo's on Indian Hill. He stopped at a gas station to buy gas for the next day, when he planned to ask for the loan of the car again. At the gas station, a woman approached him and asked for a ride, which he provided. This woman testified, confirming that she received a ride from defendant about 1:50 a.m.

There was some evidence that it would have been difficult to pump gas into defendant's truck from the position in which Mrs. Allen observed it. There was also evidence that the lighting conditions at the place Mr. Zimmerman observed the turquoise car would tend to distort colors. A defense medical expert was of the opinion that the victim had died before she was thrown into the channel, between 7:30 and 8:30 p.m., and that the cause of death was strangulation. He said there was no evidence that the child had been in a cold, oxygen-deprived environment before her death.

There was no physical evidence of the victim's presence in defendant's truck. There was also no physical evidence of defendant's presence in the truck, which was extremely dirty.

B. Penalty Phase Evidence

The prosecutor presented evidence that when defendant was 20 years old, he violently assaulted and sexually abused 2 boys, then ages 10 and 9. He threatened to

kill the children, and forced one to dig a grave. Defendant was convicted of lewd conduct with a child for these activities. Another witness described defendant's crimes against her; he offered to help her after she experienced car trouble, but instead beat her, raped her, and took her valuables. He held a knife to her back and spoke of disposing of her body. He was convicted of rape, robbery and kidnapping.

Both witnesses spoke of their humiliation, rage and fear after these traumatic events.

Evidence was also presented of defendant's convictions for the armed rape of a 14-year-old girl, for a later offense of kidnap and rape of an adult woman, and for possession of a firearm by an ex-felon.

Defendant's parole officer testified that defendant told him he was unemployed. The officer testified that he would not have permitted defendant to be employed as an ice cream truck driver in light of his history of violent sexual offenses against children.

Defendant presented no evidence and did not argue to the jury.

II. GUILT ISSUES

A. Faretta Claims

1. Alleged Interference with Defendant's Right of Self-representation.

Defendant claims that the court so interfered with his Sixth Amendment right under Faretta v. California (1975) 422 U.S. 806 (hereafter Faretta) to represent himself, that the entire judgment must be reversed. We disagree.

Jury selection began on January 7, 1985. The issue of who would represent defendant and under what terms, however, had occupied a significant part of the pretrial proceedings.

From the date of the arraignment on November 23, 1982, until a conflict of interest was declared on July 7, 1983, defendant was represented by the public defender. On the latter date the court relieved the public defender and appointed attorney David J. Daugherty to represent defendant. On September 12, 1983, the court granted defendant pro se privileges in county jail, but otherwise continued his representation by Daugherty. On May 7, 1984, the court appointed attorney Anthony R. Robusto as cocounsel with Daugherty.

Defendant subsequently filed a motion to represent himself pursuant to Faretta, supra, 422 U.S. 806. At an in camera hearing on July 31, 1984, after lengthy discussions of

the matter with defendant, the court offered him four options. First, the court offered defendant "pure" Faretta status, i.e., he would be allowed to represent himself without the assistance of any lawyer. Second, the court offered to allow defendant to represent himself with the assistance of both Daugherty and Robusto as "advisory counsel." The court explained that advisory counsel would not be permitted to participate directly in the trial as advocates, but that defendant could confer with them at any time during the proceedings on questions of law or tactics, e.g., how to question certain witnesses and what motions to make. Third, the court offered to allow the defendant to represent himself with one of his two lawyers as his "cocounsel." As authority for the offer, the court drew an analogy to its statutory power to appoint a cocounsel for a capital defendant's appointed counsel--here, defendant representing himself--if the case warrants it. (§ 987, subd. (d).) The court explained that in contrast to "advisory counsel," cocounsel would have the right to participate directly in the trial, e.g., by examining witnesses or addressing the court or jury. Fourth, the court offered to continue matters as they were, i.e., with defendant as the client and Daugherty and Robusto as his lawyers.

Seeking clarification of the third option, defendant asked whether he would be allowed to act as chief or lead counsel if his lawyer was appointed as his cocounsel. The

court replied that he would. Defendant then asked if such status as chief counsel would give him "the right to make any final decisions in the matter . . . regardless of how foolish they may be." The court said that it would. The court explained, however, that if defendant and his lawyer became cocounsel, they would be required during the trial to elect which of them would conduct the examination of any given witness or make any given motion; either, but not both, would be allowed to do so in each instance.

With these understandings defendant chose the third option, i.e., to become cocounsel with Daugherty but to act as lead counsel of the team. The court specifically found that defendant knowingly and intelligently waived his right to be represented by counsel--indeed, by two counsel--and elected to substitute himself as one of those counsel, and to proceed with Daugherty as his cocounsel and himself as his chief counsel. The court then formally granted defendant's motion to proceed in propria persona and appointed Daugherty as his cocounsel. Finally, the court directed Robusto to serve as advisory counsel.

During the ensuing three months the court held numerous pretrial hearings on motions made either by defendant or by Daugherty. On the basis of that experience the court became concerned about an apparently growing conflict between defendant and Daugherty over the substance

and strategy of the defense. The court expressed doubts that the arrangement--i.e., with defendant and Daugherty acting as cocounsel--would be workable when the proceedings reached the trial stage; the court also doubted that defendant's right to represent himself included a constitutional right to a full-fledged cocounsel as well as an advisory counsel. At an in camera hearing on November 7, 1984, after further lengthy discussions of the matter with defendant, the court reaffirmed defendant's pro se status and relieved Daugherty as his cocounsel. At defendant's insistence, however, the court immediately reappointed Daugherty as "assistant counsel" for defendant. The court explained that defendant would thereafter have the power to "make all the decisions" concerning the conduct of the defense, and that Daugherty as assistant counsel rather than cocounsel would no longer have any such power. But the court also stated that if defendant asked Daugherty to do so, the court would permit Daugherty to actively participate in all stages of the trial, e.g., by conducting voir dire, examining witnesses, or making arguments to the jury; the sole restriction was that, as before, any given examination could be conducted either by defendant or by Daugherty but not by both.^{2/} The new

^{2/} The court also relieved Robusto as "advisory counsel," except that defendant could call on him to present any matter that he had specially prepared. Defendant did so several times in the course of trial.

arrangement remained in force throughout the rest of the pretrial proceedings and the trial.^{3/}

Defendant first contends that although the court granted his Faretta motion, it thereafter conducted the proceedings in such a way as to deprive him of effective control over his defense and make his Faretta right an empty formality.^{4/} The record refutes this claim. As noted above, when the court authorized defendant to act as chief counsel with Daugherty as his cocounsel, and again when the court recognized defendant as sole counsel with Daugherty as his assistant, the court made it clear that it was defendant who was actually in charge of the conduct of the defense. On both occasions Daugherty expressly accepted his appointment with that understanding. At numerous points thereafter the court reaffirmed defendant's sole right to control the content and presentation of the defense, Daugherty acknowledged that defendant had that right, and both the court and Daugherty observed that defendant was in fact exercising that right. More important, the record confirms their observations.

^{3/} Jury selection began on January 7, 1985, and the trial ended on July 15, 1985.

^{4/} Defendant limits this claim to the pretrial proceedings and the guilt phase. As will appear, he takes the opposite position in attacking the penalty portion of the judgment, contending that in the penalty phase the court should have intervened in his case and even terminated his pro se status on its own motion.

To begin with, it plainly appears that at all stages of the proceedings defendant personally and actively participated in the conduct of his defense. Almost a year before granting defendant's Faretta motion, the court ordered that he be given pro se privileges in county jail. Thereafter--even though defendant was still represented by counsel--the court allowed defendant to file a number of pretrial motions in propria persona, and ruled favorably to him on certain of those motions. After the court granted defendant's Faretta motion and at his request appointed Daugherty first as his cocounsel and then as his assistant counsel, the court entertained an even larger number of pretrial motions personally presented by defendant.^{5/}

At the hearings on the principal pretrial motions defendant himself conducted the examination of 21 witnesses. Defendant personally selected, interviewed, and retained the two law clerks on the defense team.^{6/} When the case came on for trial it was defendant who prepared the jury questionnaire. During voir dire defendant personally examined a number of the prospective jurors. Defendant then made his

^{5/} For example, on September 27 and October 4, 1984, the court either considered or ruled on a total of more than 30 motions filed by defendant in propria persona.

^{6/} The defense team was thus composed of defendant acting as his own attorney, together with two additional attorneys, two investigators, two law clerks, and various experts.

own opening statement to the jury. Throughout the trial defendant continued to make and argue numerous additional pro se motions, including several motions to declare a mistrial and to dismiss. During the prosecution's case-in-chief defendant personally cross-examined seven witnesses, including the key prosecution witness Beverly Allen. During the defense case defendant presented and examined 21 witnesses on his behalf. Defendant then made his own closing argument to the jury. And defendant himself examined additional witnesses both in the penalty phase and at the hearings on posttrial motions.

The record also demonstrates the other half of the equation, i.e., that even after the court granted his Faretta motion it allowed defendant to use Daugherty's services in any way he saw fit. In particular, the court let defendant call on Daugherty to act as his counsel at every stage of the proceedings. Thus, Daugherty made and argued a number of pretrial motions for the defense. At the hearings on the principal pretrial motions Daugherty was permitted to conduct the examination of 18 witnesses. Daugherty was allowed to examine the bulk of the prospective jurors on voir dire, as well as the jury-selection experts called by the defense. Like defendant, at trial Daugherty also made opening and closing statements to the jury. Finally, Daugherty was permitted to examine a number of the defense witnesses and to cross-examine the majority of the witnesses in the

prosecution's case-in-chief and all the witnesses in the prosecution's rebuttal. In each of the foregoing instances Daugherty's participation in the proceedings was apparently at defendant's request or with his consent. Indeed, in his closing brief in this court defendant expressly denies making any claim that "unsolicited and excessively intrusive participation" by his assistant counsel (McKaskle v. Wiggins (1984) 465 U.S. 168, 177 [hereafter McKaskle]) impaired his right of self-representation.

Instead, defendant contends that right was impaired by actions of the trial court that "usurped defendant's control of defense tactics and strategy." He charges numerous instances of such "usurpation." We have reviewed them all, and find that most are misreadings or exaggerations of the record and the remainder refer to rulings well within the trial court's discretion. Defendant focuses on two main categories of asserted judicial interference with his defense, and we shall discuss those categories in some detail.

Defendant contends that in a number of instances the court "resolved conflicts" between him and Daugherty in favor of the latter. He cites several examples, but none supports his claim. To begin with, in none of these instances did defendant object on the ground he now asserts. And in any event the record is not as defendant portrays it. He claims, for example, that the court repeatedly "accepted Daugherty's representations" that he had furnished defendant with copies

of documents that he needed for the defense despite defendant's statement to the contrary. But this was a factual, not a tactical, disagreement. In McKaskle, supra, 465 U.S. at page 179, the Supreme Court declared that Faretta rights are adequately vindicated in proceedings outside the jury's presence if, inter alia, "disagreements between counsel and the pro se defendant are resolved in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel." (Fn. omitted.) Whether defendant had or had not received copies of certain documents was not a matter of "discretion" but an ordinary question of fact. The record shows that in resolving that question the court did not defer to counsel's personal judgment but simply tried to determine if defendant had actually received copies of all the documents he needed.^{7/}

^{7/} Thus the court asked Daugherty if he had any documents that defendant did not. Daugherty replied that to the best of his knowledge defendant had received copies of all documents in his possession, and that if any other documents turned up he would make sure defendant received them as well. Indeed, Daugherty offered to copy his entire file again for defendant, despite its size and complexity. Seeking a practical solution, the court directed defense investigator Benart to meet with defendant and show him every document in Daugherty's file, to obtain defendant's initials on each document of which he had a copy, and to provide a copy of any that defendant did not have.

Defendant similarly distorts the record in complaining that the court "again deferred to Daugherty's judgment" on the question whether Daugherty had or should have filed certain writ petitions on defendant's behalf. Rather, when the court inquired into the matter Daugherty explained that he had not in fact declined to file such petitions but had simply discussed with defendant the question of the best time (Footnote continued on next page.)

Defendant next complains that when Daugherty announced over defendant's objection that the defense was ready to proceed on its motion to suppress under Miranda v. Arizona (1966) 384 U.S. 436 (hereafter Miranda), the court "compromised defendant's right to control defense tactics" by ordering the hearing to proceed. The record shows, however, that the issue was not in fact one of "tactics" but simply of the timely availability of witnesses. When the court called the Miranda motion for hearing, Daugherty stated that the three police witnesses he wished to present were in attendance. Defendant objected on the sole ground that he had specifically requested the presence of several additional police witnesses. The prosecutor explained that the additional witnesses had recently been in the courthouse and stated he would try to secure their attendance at the next day's proceedings. The court replied that whenever additional witnesses were available it would hear their testimony.^{8/} Defendant voiced no further objection and the

(Footnote continued from previous page.)
to do so, a question that was still unresolved. Daugherty pointed out that the petitions could be filed at any time without prejudice, and offered defendant written instructions on how to file them himself if he wished to do so sooner. Defendant apparently had no wish to file them at that time, however, and was making the point merely to bolster his claim of a breakdown in communications between him and Daugherty.

^{8/} Far from pressing the defense to put on the motion at that time, the court remarked that "I don't care one way or the other, if you proceed with the motion or not."

hearing began. On the next day the additional witnesses were produced and defendant personally examined them at length. It follows there was no "compromise" of defendant's right to control the tactics of the defense.

Finally, defendant complains that the court "acquiesced in Daugherty's decision" that certain pretrial investigations defendant had requested were "not justified." Again the record is otherwise. When the court asked defendant which investigations had not been done, defendant focused on his request that Daugherty hire experts to conduct a telephonic survey of residents of the portion of Los Angeles County from which the jurors would be drawn in order to determine what percentage of them remembered reading about the murder of Robin in the local press.^{9/} But the court did not merely defer to counsel's judgment in the matter.

Instead, Daugherty explained to the court that at the time in question he had been responsible for disbursing court-authorized county funds for paying defense investigators; that he discussed defendant's idea for a telephonic survey with the company that provides such services and learned it would be a major expense, costing up to \$20,000; that he was not willing to approve so large an item without specific

^{9/} Defendant proposed to use the results of the survey in the forthcoming jury voir dire, i.e., as a ground for challenging the panel of prospective jurors if the panel answered differently the questions asked in the survey.

court authorization; and that the judge to whom the request for authorization was presented declined to grant it. Defendant does not dispute these facts, which fall well short of showing judicial "acquiescence" in a tactical decision by counsel.

In short, defendant points to no instance in which it can be fairly be said that the trial court resolved adversely a conflict between him and his counsel when the matter was "one that would be normally be left to the discretion of counsel." (*McKaskle, supra*, 465 U.S. at p. 179.) On the contrary, the record shows that after the court made defendant solely responsible for the defense and reduced Daugherty's role to that of his assistant, all parties clearly understood and observed their respective rights and duties.^{10/}

^{10/} Thus with some six weeks remaining before trial the court reminded Daugherty and Robusto that "each of you who are assisting him must realize that the decisions that are made in this case are his decisions to make." Robusto acknowledged that defendant "has now acquired all control over this particular case." And Daugherty reviewed the history of his relationship with defendant as follows: when he and defendant were cocounsel it "was a very difficult role because we were pulling against each other. I admit I was trying to direct the lawsuit in what I felt was Mr. Stansbury's best interest. And sometimes we had some conflicts.

"But since there's been a clarification that Mr. Stansbury is in propria persona and he is definitely running this case and I am assisting him, I think he would agree there has been cooperation on my part, and I have directed Mr. Slaick [a defense investigator] for instance, that he does not listen to me. He's directly taking orders from Mr. Stansbury. He's employed by Mr. Stansbury. So is Mr. Benart. So am I."

Defendant next contends the court substantially impaired his ability to conduct his defense by threatening to revoke his pro se status in a dispute over tactics. He points to two instances in which he assertedly attempted to stand mute but was told by the court that it would deprive him of his pro se status unless he put on a defense. He relies on People v. Teron (1979) 23 Cal.3d 103, 115, in which we said that a pro se defendant "bears no duty to present a defense. He has the right to plead guilty, even against the advice of counsel. [Citation.] A fortiori, having put the state to its proof, he has no obligation to try to rebut it." (See also People v. McKenzie (1983) 34 Cal.3d 616, 628 [dictum].)

We have recognized that in some circumstances a defendant representing himself, unlike counsel, may elect to refuse to participate actively in his defense. (People v. Teron, *supra*, 23 Cal.3d 103, 115; People v. McKenzie, *supra*, 34 Cal.3d 616; see also United States v. Clark (7th Cir. 1991) 943 F.2d 775, 782; Savage v. Estelle (9th Cir. 1990) 924 F.2d 1259, 1464, fn. 10; United States v. McDowell (6th Cir. 1987) 814 F.2d 245, 250.) We have also observed, however, that when a defendant's threat to stand mute is not motivated by a sincere desire to take that route, but by a desire to disrupt or manipulate the proceedings, the court does not err in terminating the defendant's pro se status. (See People v. Clark (1992) 3 Cal.4th 41, 114-115.)

A reasonable inference that can be drawn from the record is that defendant never actually intended to stand mute at the guilt trial, and that his intermittent threats to do so were simply attempts to pressure the court into agreeing to his procedural demands, to delay the trial, and to interject error into the proceedings.

We examine the record of the two incidents defendant complains of in some detail.

Just before the commencement of voir dire, defendant directed Daugherty to sit in the audience, complaining that there had been a complete breakdown in communication between them. The court offered to relieve Daugherty, but defendant admitted he needed him. He complained that Daugherty had destroyed his defense, and concluded he would have no option but to put on no defense, and "allow the District Attorney to select the jury that he wishes to select and at least attempt to remain mute throughout the trial because of the fact that my defense has been destroyed." He explained his hope that he would obtain a reversal on appeal, and be able to put on a better defense at a second trial.

The court proceeded in camera, patiently trying to determine what it was that made defendant think he should present no defense. Defendant made a rambling complaint that Daugherty had failed to file five writs of prohibition that were critical to his case, but whose nature he could not

immediately recall. The court stated: "Mr. Stansbury, wait a minute. I hate to interrupt. You've been going 20 minutes and you haven't told me anything. [¶] I want you to get to factual matters. I think you're trying to delay the start of this trial. If you have something specific, please state it."

It transpired that defendant wanted writ relief from the court's in limine rulings on various evidentiary points and on his request for a continuance. Daugherty had told defendant that the writ petitions did not have to be filed and acted on before the commencement of trial, and defendant apparently did not like this accurate legal advice. Defendant also complained that Daugherty had fired his law clerk; it transpired that the law clerk had taken another job because he was not given enough hours of work on defendant's case. (Daugherty explained to the court that defendant had complete control over all six of his law clerks.)

As the court pressed defendant for details, defendant responded vaguely that he had a "great many disagreements" with Daugherty, and said that because his experience was that the court would not replace Daugherty, it was a waste of his time to try to answer the court's questions specifically. Daugherty stated that defendant's interest in the writ petitions was that they be aimed so as to cause a delay of the trial, and that he did not think the complaints about the writs or the law clerks were the real reason for defendant's threat to put on no defense.

The court carefully explained that the pretrial writs were still available to defendant, and stated that it was satisfied by Daugherty's representations about the assistance available to defendant from various law clerks. The court informed defendant that if he wanted Daugherty's help, he would have to allow the man to sit at counsel table. The court also cautioned defendant that he would have to behave properly in front of the jury.

Defendant responded that the issue of his behavior would not come up: "Perhaps the court misunderstood me. [¶] I had no alternative but to allow the court and Mr. Burns [the prosecutor] to go forward and select the jury of Mr. Burns's choice, at which time I would have no alternative but to attempt to remain mute throughout the trial."

The court cautioned defendant that from what it knew of the facts, the People's case could well result in a conviction, and that defendant's failure to participate could seriously limit the issues available on appeal. Daugherty commented that he thought defendant was of the view that "essentially if he sits back and do[es] nothing, he can create error and have a new trial." Daugherty felt this was a terrible gamble, and asked that defendant be given more time to "ponder his choices."

The court, too, was concerned, and discussed the burdens of pro se status with defendant at length. Then the

court said, "if you decide you are not going to participate in this case, . . . I'm going to relieve you of your pro. per. status, and I'm going to direct Mr. Daugherty to proceed on the defense of this matter." The court explained that to put on no defense was basically to plead guilty, that "the risk you take is substantial and I think I become party to that risk if you did elect to sit back and not take any steps to represent or defend yourself."

Defendant explained that he could not proceed with Daugherty as assistant counsel because Daugherty had "ruined" everything, but that to try to defend without Daugherty would not work either, because Daugherty's preparation was in support of some defense defendant did not want. Therefore it was better either to not defend at all, or have the court fire Daugherty and "allow me to have an attorney to assist me that I can have some kind of faith and trust in." The court refused to consider appointing another attorney, because such an appointment would require further continuance. The court noted that it had been five and a half months since defendant had been granted pro se status, plenty of time in which to prepare a defense.

Defendant then said he wanted to present a defense. The court seized on this admission, and explained that this is what it would insist on: "If you are going to stand mute and rely on my previous rulings at this point, up to this

point in the trial, I would not allow you to do that. [¶] I think it would be irresponsible for me to allow you to stand mute and let the People present the kind of evidence I know they will present. [¶] And your hope or wishful thinking, whatever flaws in this case are going to be identified by the jury, I think is wishful thinking to the point of being irresponsible."

Defendant agreed with the court that it was wishful thinking to suppose the jury would not convict him if he stood mute, but he argued that a reversal was certain on appeal because of the trial court's errors.

The court responded that a reversal on appeal was not to be counted on, that there was too much at stake, and that it wanted to assure defendant of a fair trial. The court gave defendant until the actual commencement of voir dire to reflect, find authority and convince the court that his was a "legitimate tactic", but gave an indicated ruling that it would not permit defendant to stand mute. The next day, when voir dire was to begin, the court reiterated its ruling that defendant would not be permitted to stand mute. ♣

The record supports the conclusion that defendant lacked a sincere desire not to participate in his defense at the guilt phase of trial. As in People v. Clark, supra, 3 Cal.4th at page 114, defendant had eagerly sought to defend himself and had a particular defense strategy in mind when he

became disgruntled with some of the court's rulings and with his assistant counsel's attitude. He admitted that he would be kidding himself to think he had any chance of prevailing at trial if he put on no defense; rather, he sought to interject error into the trial so that the conviction would be reversed on appeal. At the very least, he was operating under the misapprehension that he was sure to prevail on appeal. Both the court and defendant's assistant counsel expressed the opinion that defendant was simply playing for time.

Once a pro se defendant invites advisory counsel to assist him, his standing to complain that counsel interfered with his presentation of a defense sharply diminishes.

(McKaskle, supra, 465 U.S. at p. 182.) The court retains authority to exercise its judgment regarding the extent to which such advisory counsel may participate against defendant's wishes. (Id. at p. 178, fn. 8; People v. Clark, supra, 3 Cal.4th at p. 115.) Similarly, we think that the court retains authority to determine whether defendant's expressed desire to stand mute is sincere, or whether it is an attempt to coerce the court. Here, the court went beyond that task by also expressing the opinion that defendant would not have a fair trial if he stood mute; nonetheless, the court also made it clear that defendant's reason for standing mute was not that he had no defense, or that he thought

silence was the best defense, but that he was not pleased with the way things were going and thought he was sure to get a second trial where things would go his way. We see no error in a court refusing to permit a defendant to stand mute at trial, when that defendant is attempting to manipulate the legal system while operating under such a basic misapprehension.

That defendant's desire to stand mute was insincere and manipulative is further demonstrated by his earlier threat to do the same thing. Two months before the commencement of trial, the court indicated that it thought defendant was not entitled to the appointment of two counsel to assist him; after discussion the court appointed Daugherty as assistant counsel and relieved Robusto, who had been appointed in the capacity of advisory counsel. The court added that Robusto could finish working on any matters he had in hand. Defendant immediately threatened to stand mute if he could not have both men assisting him, and if he could not require Daugherty to handle a witness exactly as he, defendant, saw fit. His reason was that the trial court was in error and that the case should proceed rapidly to judgment so that he, defendant, could be vindicated on appeal. He abandoned his position, but his tendency to attempt to blackmail the court with the threat to stand mute is evident.

Defendant complains of a second instance when his desire to stand mute was met with a threat to revoke his pro se status. At the conclusion of the People's case-in-chief at the guilt trial, defendant complained that his defense witnesses would not be called in a certain order, and that therefore, he preferred to put on no defense and stand mute. The court was understandably stunned, and asked "Because we're down to the point we've got witnesses here and you're now pouting because somehow or another you can't get them in a particular order[?]"

The court continued: "Several times during this trial when things haven't gone exactly your way, you begin to withdraw and you get upset and you indicate you're not going to participate. . . . If you decide you don't want to proceed with your witnesses, then we'll -- I'll instruct Mr. Daugherty to proceed with the defense that was originally scheduled by the attorneys that were going to present a defense in this case. [¶] But that's a decision you have to make. Sometimes you have to take witnesses out of order. That's just the way things are."

The court pressed defendant to explain why it was so critical to his defense that his witnesses be called in a certain order, and defendant was utterly unable to do so. The court asked whether defendant would present his defense and defendant persisted: "I'm left with an alternative of no

defense because of what is happening here. And I am looking ahead. I see what is happening. I am not totally blind. I have made complaints about this repetitiously since this case has begun with attorney Daugherty."

The court informed defendant that he was simply trying to cloud the record and giving the court a "song and dance" without telling the court what it was he wanted. Defendant grew sulky and repeated that he was thinking of resting the defense. After conferring with assistant counsel, he announced that he would like to rest the defense, but that counsel had informed him that the court would direct assistant counsel to put on the defense he had prepared. Defendant commented that from the court's earlier position, he had no doubt that counsel was right about what the court would do. As he was adamantly opposed to losing his pro se status, he said he would present a defense, but that he needed time to interview some witnesses.

The court pointed out that defendant had had months to interview his witnesses, and that there was no justification for any delay. The court directed defendant to proceed with his witnesses, or have Mr. Daugherty proceed.

Again, the record supports the inference that at this point in the trial, defendant did not sincerely want to abandon his defense. He had a long list of witnesses to be called, and was so concerned about the proper presentation of

his defense that he became irrational when he found he could not present the witnesses in a particular order. His stated inclination not to present any defense was not sincere, but was a petulant reaction to being frustrated regarding the order of witnesses.

It is of course true that defendant ultimately did stand mute at the penalty trial. But we must examine the trial court's response to his earlier threats to do so in light of the record available to the court at the time it was called upon to rule. In both instances at the guilt trial, as we have seen, the court justifiably thought that defendant was being manipulative, and that his desire to stand mute was not a sincere decision that this would be the best defense, but an attempt to interject error and delay into the proceedings. By contrast, as to defendant's decision to stand mute at the penalty trial, defendant had made it clear throughout the proceedings that if he were convicted, he would seek the death penalty, and that no defense was to be prepared. He was outraged when he found his investigators had done some work on uncovering defense evidence to be presented at the penalty trial; he was consistently adamant that no defense be prepared or presented.

In sum, we see no improper interference with defendant's right to represent himself. Defendant used the threat to stand mute as a weapon when the court ruled against

him. The court was within its power to counter that apparently insincere threat with its threat to revoke defendant's pro se status, which, after all, was not inviolate. (Faretta, supra, 422 U.S. at p. 835, fn. 46; People v. Clark, supra, 3 Cal.4th at p. 115.)

2. Impact of Confinement on Self-representation

Defendant complains that the trial court was indifferent to the conditions of his confinement during trial, and that these conditions impaired his ability to represent himself, in violation of the Sixth Amendment of the United States Constitution, article 1, section 15 of the California Constitution and Faretta, supra, 422 U.S. 806. (See also Milton v. Morris (9th Cir. 1985) 767 F.2d 1443, 1446.)

The record is otherwise. The court held hearings so that defendant could air his complaints about the availability of books, lighting conditions, the filling of his prescription for eyeglasses, and four security searches that had occurred in his cell. The court intervened in several instances, and made a factual finding that defendant's legal materials had not been disturbed during two searches, and that defendant had adequate time to reassemble disturbed materials in the case of the searches that did affect his materials. Defendant had two lawyers and several

law clerks and investigators at his disposal, as well as access to the law library. He fails to bring to our attention any fact demonstrating that his confinement unfairly impaired his ability to represent himself.

Thus, for example, when defendant complained that the lighting conditions in his cell and the noise in the jail were impairing his ability to work on his case, we conclude the court was justified in responding after a hearing on the matter that the lighting, though not perfect, was adequate, and that the voluminous output of motions defendant had produced from the cell belied his claim. There had been testimony that defendant could read and study in his cell, and that the lighting was adequate in the library and holding cell.

Defendant also complained that he was wasting time and energy riding on the common inmate's bus from downtown Los Angeles to Pomona and back each day of trial, and that during the many hours a day he spent in transit, other inmates verbally abused him. The court again responded after a hearing that the time in transit did not seem to have impaired the defendant's ability to participate, and that defendant was kept away from other prisoners so that he could not be harmed.

And when defendant complained that the library facilities available to him were inadequate, because, for

example, pages had been torn out of the books, the court appropriately pointed out that defendant had not only the jail law library at his disposal, but also the assistance of two lawyers and two law clerks who could and did supply him with legal materials.

Defendant's charge that the court failed to intervene on his behalf to mitigate the effect of confinement on his ability to represent himself is contradicted by the record. The court ordered that he be given a typewriter in his cell until jail authorities pointed out it could be dismantled and turned into a weapon. The court determined that defendant would have access to a typewriter in the jail library and also indicated it would accept handwritten motions. The court directed jail authorities to place defendant in a library group in which he would not feel threatened. The court ordered two medical appointments for defendant, and ordered that he receive the glasses he needed. He received three pairs of glasses, in all. Defendant was permitted to use the library by himself on weekends to make up for time in court. The court ordered that special accommodations be made so that defendant could visit the jail store on Fridays, when court was not in session.

As for the searches of defendant's cell, defendant again is unable to show how they impaired his ability to

prepare his defense. Defendant complained that he had been awakened in the night and subjected to a disruptive search on April 26, 1985, but the court found that the search had not impaired his ability to prepare. The court stated that defendant's preparation would be based mainly on the daily transcripts, which were obviously very easy to reassemble. The court commented that defendant had excellent recall and command of the evidence, and that he would have had five days to reassemble his notes by the time they were required for closing argument.

Another search occurred on May 11, 1985, but this time, defendant's complaint was that the searching officer had an animus against him and intended to harass him and interfere with his ability to prepare. Again, defendant had several days to reorganize his materials before they were needed for closing argument. Defendant's complaint that searches on May 23 and May 24, 1985, interfered with his preparation of his opening statement for the penalty phase of trial was not credited. The court held a hearing and took evidence from the searching officers, and apparently believed the latter's testimony that they left defendant's materials in the exact order they found them.

Defendant's claim that he was denied reasonable access to resources necessary to enable him to represent himself cannot be sustained. We are satisfied that the trial

court adequately assured such access in defendant's case.

3. Knowing, Intelligent Waiver of Right to Counsel

In the alternative, defendant argues not that his right to represent himself was violated, but that his state and federal constitutional right to counsel was violated because he was not adequately warned of the limitations that would be imposed on his right and ability to represent himself. He argues specifically that he was not advised (1) that the court would limit his control over the defense to be presented, or (2) that his custody status might change and begin to impair his ability to represent himself.

No particular form of words is required in admonishing a defendant who seeks to forego the right to counsel and to represent himself. "The test of a valid waiver of counsel is not whether specific warnings or advisements were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case." (People v. Bloom (1989) 48 Cal.3d 1194, 1225.)

The court repeatedly and laboriously warned defendant of the dangers of self-representation. The record as a whole establishes defendant's competency to make that

decision, and he does not now raise the issue of competency. We have concluded that the court did not impinge on defendant's ability to control the defense of his case, nor did the conditions of defendant's incarceration ever impair his ability to defend himself. Accordingly, defendant's argument is based on an inaccurate premise and cannot be sustained.

B. Miranda Violation

Defendant asserts that evidence of his statements to the police was admitted in violation of his rights under Miranda, supra, 384 U.S. 436. Respondent would bar the claim on appeal because at trial defendant incorrectly moved to suppress the statements under section 1538.5, and because defendant failed to renew his motion to suppress when the statements were offered in evidence at trial. Respondent also argues that the statements were admissible despite any Miranda violation because they were offered only for impeachment. (See Harris v. New York (1971) 401 U.S. 222, 225; People v. May (1988) 44 Cal.3d 309, 319-320.)^{11/}

It is true that a motion to suppress statements for claimed violations of Fifth and Sixth Amendment rights is not

^{11/} Defendant's claim that any error affecting the jury's evaluation of his credibility must be deemed prejudicial is not separately addressed, because we have found no such error.

properly brought under section 1538.5. A motion under that section lies to exclude evidence obtained in violation of the right to be free from unreasonable searches and seizures. (People v. Mattson (1990) 50 Cal.3d 826, 850-851.)

The trial court clearly understood that defendant's claim was based on the Fifth Amendment and Miranda, supra, 384 U.S. 436. The court treated the motion as a nonstatutory motion to exclude under Evidence Code section 402, and we will do the same. (See People v. Mattson, supra, 50 Cal.3d at pp. 851-852.)

It is also true that in limine motions to exclude evidence normally must be renewed when the evidence is introduced at trial in order to preserve the issue for appeal. (People v. Morris (1991) 53 Cal.3d 152, 189.) Nonetheless, as the motion was advanced on a specific legal theory, was directed to a "particular, identifiable body of evidence," and the motion was made "at a time . . . when the trial judge [could] determine the evidentiary question in its appropriate context," we decline to find that the issue was waived for the purpose of appeal. (Id., at p. 190; see also People v. Boyer (1989) 48 Cal.3d 247, 270, fn. 13.)

Defendant made statements to the police about his movements on the day of the crime, and these were admitted in the prosecution's case-in-chief. The statements were

inconsistent with other prosecution evidence; they were not merely used to impeach defendant's trial testimony, but as substantive evidence of his guilt. Thus, for example, although defendant said to the police that he had gone to a certain Sambo's restaurant at a critical time on the night of the crime, a waitress at the restaurant testified that defendant was a regular customer but that he had not been at the restaurant on the night of the crime. The jury was instructed they could rely on the statements to show consciousness of guilt. As the statements were not simply offered to impeach defendant when he testified, they do not fall within the rule that statements taken in violation of Miranda may be used for impeachment. (See Harris v. New York, supra, 401 U.S. at p. 225; People v. May, supra, 44 Cal.3d at pp. 319-320.)

The question we must resolve is whether defendant was in custody and subject to interrogation when the statements were made. The trial court found that defendant became subject to a custodial interrogation at a certain point in the interview; defendant would have us find the entire interview a custodial interrogation. The trial court's resolution of factual disputes is to be affirmed if it is based on substantial evidence. (People v. Mickey (1991) 54 Cal.3d 612, 649; see also People v. Clair (1992) 2 Cal.4th 629, 679.) "We must accept the trial court's

resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained." (People v. Boyer, supra, 48 Cal.3d at p. 263.)

Custody "occurs if the suspect is physically deprived of his freedom of action in any way or is led to believe, as a reasonable person, that he is so deprived." (Green v. Superior Court (1985) 40 Cal.3d 126, 133-134, quoting People v. Arnold (1967) 66 Cal.2d 438, 448; see also Berkemer v. McCarty (1984) 468 U.S. 420, 442.) "In deciding the custody issue, the totality of the circumstances is relevant, and no one factor is dispositive. [Citation.] However, the most important considerations include (1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning." (People v. Boyer, supra, 48 Cal.3d at p. 272.)

Testimony at the hearing on the motion to suppress showed that the officer in charge of investigating the murder of Robyn, Lieutenant Johnston of the Baldwin Park Police Department, had some information indicating that the victim had been talking to an ice cream truck driver before her

disappearance. Two ice cream truck drivers, including defendant, were asked to come to the police station for questioning. Johnston was more suspicious of the other driver, as he met the description the officer then had of the driver seen with Robyn just before she disappeared, while defendant did not. As far as Johnston knew, defendant had last seen the victim an hour or so before she disappeared. While the officer was involved in questioning the other ice cream truck driver, he asked Officer Lee, who was not involved in the investigation, to go to defendant's home in Pomona to ask him if he would come to the Pomona police station for questioning as a potential witness. Johnston steadfastly denied during the hearing that suspicion had focused on defendant at the time he was asked to come to the station. The officer considered defendant merely a potential witness, and so instructed Lee.

Lee and three other plainclothes Baldwin Park police officers arrived at defendant's trailer at 11 p.m., with guns out but not displayed. They were not homicide investigators. They drew their guns for their own protection; they were not familiar with the area and did not know what to expect. Officer Lee, who talked with defendant, had his gun hidden behind his leg. He had not been told that defendant was a suspect, and had not been told to arrest him if he refused to come to the station. Lee was told to treat

defendant as a witness. Defendant was very cooperative and agreed to come in to the Pomona Police Department for an interview. He was given the choice whether to accept a ride with the police or to drive his own car. He accepted a ride and sat in the front seat with Lee, under no restraint. He was placed in an interview room in the jail section of the Pomona Police Department, because Lee was from another police department and did not know whether any other section of the Pomona police station would be open late at night. Johnston came to interview defendant in the jail section interview room because he had experienced difficulties and delays in using the nonsecure area of the police station in interviewing another witness that evening.

Defendant was interviewed by Johnston, and another Baldwin Park officer observed. Neither of them considered defendant to be in custody, and both testified that defendant could have left the interview room had he asked to. He would have needed their help to leave, as he was in a locked interview room in the secure area of the jail. Johnston asked defendant about his movements on the previous day, and defendant recounted them. He said he had seen the victim about 6 p.m., had continued on his ice cream route, and had taken a circuitous journey back to his home Pomona because he was experiencing engine trouble. He described buying gasoline, then arriving home about 9 p.m. When defendant

said that he had left his home about midnight in a borrowed turquoise car, Johnston became suspicious, as a witness had seen the victim thrown from a turquoise car in the early morning hours. The officer asked defendant whether he had any criminal record, and defendant admitted prior convictions for rape, kidnapping and child molestation. Johnston terminated the interview, which had lasted 20 or 30 minutes. He conferred with two other homicide investigators and returned to the interview room with them. They advised defendant of his Miranda rights, and defendant declared that he did not wish to make any further statements.

The trial court concluded that when defendant was brought to the station, he was not the focus of suspicion. The court noted the information that Johnston had at the time of the interview. This information suggested that the victim had been abducted by another man driving an ice cream truck, and that the conduct of this man when he was contacted as a witness tended to confirm Johnston's suspicions. It was only when defendant said that he had taken a turquoise car out in the early morning hours that suspicion focused on defendant, and the court suppressed statements made after that point.

The trial court's determination that suspicion focused on defendant only when he mentioned that he had driven a turquoise car on the night of the crime is supported by substantial evidence. All the police officers involved

testified that defendant was not considered a suspect until that point in the interview. Defendant was invited, not commanded, to come to the police station for an interview, and he was given the option of driving himself. As we have noted, the officers involved testified that they would have honored his refusal to come to the station, and that they would have let him go during questioning if he had so requested. Defendant did not testify at the hearing; there is no evidence that defendant felt under restraint.

Defendant disputes the accuracy of the trial court's finding, and by implication, the truthfulness of the officers who testified at the hearing. We accept the trial court's finding on this point as supported by substantial evidence, but we also point out that at the time of the interview the police were following many leads. They had not decided that the perpetrator was probably the driver of an ice cream truck, let alone that it was defendant. They had only a small child's observation to connect the abduction to an ice cream truck driver, while an adult witness had actually seen the victim removed from a turquoise passenger car and flung into a ditch. Defendant's insistence that suspicion had focused on him because he was an ice cream truck driver who had been seen talking to the victim an hour before her abduction ignores the state of information available to the police at the time of the interview.

We also observe that the form of questioning at defendant's interview was not accusatory; the investigating officer simply asked defendant, a potential witness, to describe his movements and observations. (Cf. Green v. Superior Court, supra, 40 Cal.3d at p. 132 [questions detailed but not accusatory].) This is not a case in which officers accused defendant of involvement in the crime, or of lying about his movements, or in which the officer confronted the defendant with evidence against him (cf. People v. Boyer, supra, 48 Cal.3d at p. 272) or asked for cooperation in lieu of immediate arrest and incarceration. (Cf. People v. Celaya (1987) 191 Cal.App.3d 665, 668-669, 672.) This was simply an investigation regarding a lead that had not focused suspicion on defendant. (See People v. Holloway (1990) 50 Cal.3d 1098, 1115.) Defendant's answers were for the most part in a narrative form. The interview was brief.^{12/}

Defendant makes much of his claim that the officers who invited him to the station arrived at his door with guns in their hands. (See People v. Taylor (1976) 178 Cal.App.3d

^{12/} Defendant's claim that there is a conflict in the evidence about the length of the interview is not supported by the record. The evidence is that the interview took 20 or 30 minutes. After defendant mentioned the turquoise car, it took an hour or so to decide how to proceed, and to book defendant, but the length of the interview up until that point was a brief 20 or 30 minutes.

217, 229.) However, as we have noted, Officer Lee, who spoke to defendant, had his gun hidden behind his leg. The other officer who testified on the point said his gun was not drawn, but in his hand, not pointed at anyone. There is no evidence defendant saw the guns. In any case, we have said that police display of guns does not alone create a custodial situation. (People v. Clair, supra, 2 Cal.4th at p. 679.)

Defendant notes that he was on parole at the time of his encounter with the police, and that this must be considered to have strengthened his impression that he had no choice but to cooperate. But neither the officers who contacted him nor the officers who interviewed him knew he was on parole. Their conduct would not suggest to the reasonable person that they were exerting authority over him under the terms of the conditions of his parole. They solicited his voluntary cooperation, asked if he wanted to drive himself to the station, and conducted him there under no restraint. This was hardly an assertion of authority such that the reasonable person would consider there was no choice but to obey.

Although it is true that defendant was interviewed in a locked room, there is no evidence that he felt that he could not ask to leave at any point. The coercive environment of the police station is not in itself enough to establish that lack of freedom of movement that is essential

to custody. (California v. Beheler (1983) 463 U.S. 1121, 1125; see also Oregon v. Mathiason (1977) 429 U.S. 492.) Officer Johnston testified that he would have released defendant upon his request up until his mention of the turquoise automobile. "Notwithstanding the lock on the interview room door, the evidence does not compel the conclusion that defendant could not have left whenever he wanted during the interview." (Green v. Superior Court, supra, 40 Cal.3d at p. 136.)

We conclude that defendant was not subject to custodial interrogation before he mentioned the turquoise car. The trial court suppressed all statements made after that point; it was not error to refuse to suppress any statement or fruit of a statement made before that point.

C. Failure to Preserve Evidence

Relying on People v. Hitch (1974) 12 Cal.3d 641, defendant claimed at trial that the police violated his state and federal due process rights because they failed to preserve the contents of the ice cream freezer in the ice cream truck he was driving on the night of the crime. He also claimed his due process rights were violated because police removed a gasoline sales receipt from the truck and lost it.

After a very lengthy evidentiary hearing, the trial court rejected defendant's argument and denied his motion for sanctions, but invited defendant to request cautionary jury instructions if the evidence at trial supported them.^{13/} Defendant did not request any jury instructions on this point.

The police seized the ice cream truck and examined it, including the freezer, for physical evidence of the victim's presence. Before they removed the contents of the freezer, they photographed most of the interior of the freezer. They found no physical evidence of the victim's presence, apart from some inconclusive evidence that the ice cream boxes were in disarray, that some boxes appeared to have been crushed, and that some ice cream appeared to have melted and refrozen. However, there was no pattern to this crushing or melting. The police criminalist did not consider retaining the freezer and its contents, but released the ice cream truck with its contents to its registered owner. He considered that the contents of the freezer could be reconstructed by using the photographs taken at the time of the search, and that this would be adequate to determine whether a body had been in the freezer.

^{13/} Defendant sought as a sanction a ruling that no prosecution witness could mention the condition of the ice cream boxes found in the freezer of the ice cream truck he had been driving or express an opinion whether the victim had been in the freezer.

Defendant argued that failure to keep the freezer with its contents still frozen deprived him of the opportunity to examine the freezer for evidence that no body had been in it. A defense criminalist testified at the hearing on the matter that he would have numbered the ice cream boxes before removing them to search for blood and hair, and then he would have reassembled the boxes as they had been found. He would have kept the freezer in working order or would have kept the contents in some other freezer if that were not possible. As a defense criminalist, he would have examined the ice cream boxes to see if he could demonstrate that they showed no signs of crushing or melting, or other sign that a person had been deposited in the ice cream freezer.

The state's duty to preserve evidence is "limited to evidence that might be expected to play a significant role in the suspect's defense. To meet this standard of constitutional materiality, [citation], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (California v. Trombetta (1984) 467 U.S. 479, 488-489, fn. omitted.) This rule supersedes the standard we stated in People v. Hitch, *supra*, 12 Cal.3d 641. (People v. Johnson (1989) 47 Cal.3d 1194, 1233-1234.)

Defendant's claim that the exculpatory value of the evidence should have been clear is misplaced. His own expert provided only speculation that the evidence might have proved to be of exculpatory value. "'The mere possibility that an item of . . . information might have helped the defense . . . does not establish "materiality" in the constitutional sense.'" (People v. Fauber (1992) 2 Cal.4th 792, 829, quoting United States v. Agurs (1976) 427 U.S. 97, 109-110.)

Defendant argues that because the police search of the freezer uncovered no physical evidence such as blood or hair, the freezer contents must be deemed clearly exculpatory. We disagree. The exculpatory evidence that the freezer contained no trace of blood or hair or body fluid was available and before the jury. However, the evidence regarding the condition of the freezer contents was somewhat inculpatory, as there was some evidence of crushing and melting. It is not evident to us, especially given the speculative nature of the testimony of defendant's expert, that the exculpatory value of this evidence should have been clear to the police.

Further, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (Arizona v. Youngblood (1988) 488 U.S.

51, 58.) This requirement is followed in this state. (People v. Cooper (1991) 53 Cal.3d 771, 810-811.) The police criminalist did not consider retaining the contents of the freezer because he was satisfied that the photographs adequately recorded the condition of the evidence. The record is devoid of evidence that the police acted in bad faith.

As for defendant's claim that the police violated his due process rights when they lost a gasoline sales receipt they had confiscated from his truck, comparable evidence was available. The prosecution stipulated to the existence of the receipt, and the date and place of the sale. The police had a record of the receipt in the evidence log, also confirming the date and place the receipt was issued. Defendant would have had the court instruct the jury that the receipt would have showed that he bought gas at a particular time; but it is uncontroverted that the receipts from the gas station in question did not contain the time of the sale. Defendant could have contacted witnesses at the gas station to ascertain the time of the sale, but he waited almost two years to do so. By that time apparently no one remembered, but a more timely inquiry could have unearthed the evidence. Thus comparable evidence of the time of this gasoline sale was available to defendant. In any event, again, there was no evidence that the police acted in bad

faith. The receipt was simply lost, despite a major search for it in various record repositories and among the personal and business effects of persons officially connected with the case. We conclude that there was no due process violation.

D. Prosecutorial Misconduct

Defendant urges that the prosecutor committed prejudicial misconduct when, in argument to the jury, he urged the jurors to imagine the victim's feelings, made improper statements regarding evidence of defendant's consciousness of guilt and his alibi defense, and vouched for the credibility of a key prosecution witness.

There was no objection to any of these comments and any harm arising from them could have been cured by an admonition. Therefore the issue is waived on appeal. (People v. Green (1980) 27 Cal.3d 1, 27; see also People v. Clair, supra, 2 Cal.4th at p. 662.)

Even if defendant had preserved his claims, we would find no reversible error.

The prosecutor improperly appealed to the passions of the jury in urging them to consider the suffering of the victim: "Under what we are dealing with here, we are dealing with a 10-year old child who was taken from her home, taken to a place she had never been, experiencing things she had no idea how to deal with. [¶] She was degraded, violated,

raped, evidence of oral sex. [¶] Think what she must have been thinking in her last moments of consciousness during the assault. [¶] Think of how she might have begged or pleaded or cried. All of those falling on deaf ears, deaf ears for one purpose and one purpose only, the pleasure of the perpetrator." (Italics added.)

We have settled that an appeal to the jury to view the crime through the eyes of the victim is misconduct at the guilt phase of trial; an appeal for sympathy for the victim is out of place during an objective determination of guilt. (People v. Fields (1983) 35 Cal.3d 329, 362; see also People v. Pensinger (1991) 52 Cal.3d 1210, 1250 [misconduct to ask jury to suppose crime had happened to their children].)

Nonetheless, we find no prejudice. The statement must be viewed in context; final argument extended over a period of four days, and this was but a single reference in a long, complex and otherwise scrupulous argument about the facts of the case. We note also that the jury deliberated for four days, and we do not believe a brief statement of this sort would sway the jury over that long a period. There is no reasonable probability that a result more favorable to defendant would have been reached in the absence of the misconduct. (People v. Pensinger, supra, 52 Cal.3d at p. 1250.)

Defendant also complains that in his attack on defendant's alibi defense, the prosecutor committed misconduct by interjecting his personal belief and experience as a prosecutor. Characterizing the defense as based upon lies and deception, the prosecutor said "that's the best case I've ever seen in any case I've ever prosecuted of intentional misrepresentation and consciousness of guilt."

The prosecutor's comment on the evidence was not inappropriate. (See People v. Rich (1988) 45 Cal.3d 1036, 1092 [appropriate comment on the evidence to argue "'I have never seen deliberation and premeditation like that'"].) We disagree that the jury would understand that the prosecutor was trying to sway them by referring to facts outside the record or to his own personal beliefs regarding defendant's credibility. Defendant omits the prosecutor's very next words: "And if you believe that that's what you were a witness to or subjected to, then you may consider that in deciding that Mr. Stansbury is, in fact, guilty, and that may weigh in your decision." The prosecutor attacked defendant's alibi in argument for two days, meticulously countering every claim and bringing to light every inconsistency and falsehood. It must have been evident to the jury that it was the evidence produced at trial, not the prosecutor's experience, that demonstrated defendant's mendacity and consciousness of guilt. Indeed, the prosecutor more than

once reminded the jury that his views were not controlling, but that they should ~~consult their notes~~ and the transcript of the trial. The jury was instructed to the same effect. We conclude that it is not reasonably likely that the jury would have understood the remarks as defendant urges. (See People v. Clair, supra, 2 Cal.4th at pp. 662-663.)

Defendant next claims the prosecutor made an improper comment on defendant's courtroom demeanor in his opening statement. (See People v. Heishman (1988) 45 Cal.3d 147, 197.) The prosecutor noted that the evidence was that at the time of the crime, defendant had a shaggy beard, and dirty long hair. At trial, he was clean-shaven and well dressed. The prosecutor suggested that this transformation was intended to deceive the jury and the witnesses who would be called upon to identify him. "As you sit in this courtroom right now, you are the victims, the intended targets, the recipients of another con job, if you will. Maybe not so strong. Maybe more on the subtle ground. But take a look at Mr. Stansbury right now. I invite you to look at him, his appearance, demeanor. You might expect him to be a businessman that you might meet in the street, nice three-piece suit." The prosecutor surmised that the witnesses would not be deceived, and that the defendant's primary motivation in altering his appearance was to give the jury a false impression of his character through his

demeanor. He concluded: "That's not important, I suppose. It's his right. He can look and appear anyway he wants to. Just understand, that's all I'm asking, understand what's going on. Draw whatever conclusions you feel are appropriate, whether motives you wish to ascribe, whatever significance you put. When you are here as jurors, you are here to hear and see and feel what you deem to be appropriate. . . . It will be you and you alone who will ultimately decide the facts in this case, on whatever grounds and whatever basis and whatever procedures you think to be appropriate."

Far from being the centerpiece of the prosecutor's argument, as defendant claims, this was a brief detour, half-heartedly undertaken, intended to warn the jury to disregard the defendant's appearance in evaluating his credibility. This was not a case in which the jury was arguably instructed that it could consider a nontestifying defendant's demeanor as evidence of guilt. (Compare People v. Garcia (1984) 160 Cal.App.3d 82, 90-91.) The advice to ignore the defendant's demeanor and decide the case on the basis of the evidence is not misconduct. (People v. Price (1991) 1 Cal.4th 324, 454.) The suggestion that defendant was a "con man" was an appropriate comment, in colorful terms, upon the evidence to be introduced at trial. (See People v. Pinholster (1992) 1 Cal.4th 865, 948.)

Finally, defendant makes a completely insubstantial argument that the prosecutor improperly vouched for the credibility of prosecution witness Beverly Allen. We disagree with his claim. The argument that Allen was a believable witness who had done a great deal of soul searching was a proper comment on the evidence, not an attempt on the part of the prosecutor to personally vouch for the witness's credibility. (Cf. People v. Gates (1987) 43 Cal.3d 1168, 1186-1187.) "Argument that states the prosecutor's conclusions as to the weight of the evidence and conclusions to be drawn from it is proper." (People v. Clark (1990) 50 Cal.3d 583, 630.) The claim that the prosecutor used the prestige of the prosecutor's office to display Allen as a strong witness is refuted by the record. The prosecutor said: "We haven't shown her any evidence . . . in this case because I wanted her to make her information as strong or as weak as it was going to be based on what she knew and what she knew alone." (Italics added.) We see no misconduct.

E. Motion for Mistrial

Defendant argues that the trial court erred in refusing to grant a mistrial after defendant's own witness volunteered under cross-examination that she thought he had recently been released from prison.

Patricia Jackson testified for the defense that she had accepted a ride from defendant on the night of the crime about 2 a.m. Her testimony was offered in support of his alibi defense. On cross-examination, after asking about her encounter with defendant, the prosecutor asked: "How did you find out about this case?" The witness launched into the following narrative: "Well, that particular--okay. [¶] That evening I got in. And not knowing, I was watching Channel 7 news the next day, which I still didn't put it together at the time that this was the gentleman that I had rode home with. [¶] I never did until the police came a week from then, that Thursday. [¶] And then they told me. And that like kind of confirmed that. [¶] Other than that, I seen the news and what was said and everything. [¶] And I had commented to my mother because I think the news lady had said that this particular person had just got out of prison. I'm not sure." The prosecutor interrupted: "Excuse me. [¶] Now, the question--we're getting a little ahead of ourselves, Mrs. Jackson. [¶] You said the police came by?"

After a few more questions, the court declared a recess. It instructed the witness not to say anything further about defendant having been in prison. It noted for the record that when the witness volunteered the remark about prison, the court heard Daugherty tell defendant to object. Daugherty said he had anticipated the problem, and had told

defendant to object that the witness was being nonresponsive even before the damaging statement came out. Defendant explained that he had not objected because he was "hoping that because of the continuing dialogue that it would hopefully be lost." The court noted that it had had no warning that the statement was coming, and that it seemed none of the other participants had foreseen the problem. The prosecutor agreed that he had no idea the witness would make such a statement, and said that he had done his best to cut off further statements and move the witness along to another topic. He also stated that he had not seen any response from the jury to the statement. The defendant acknowledged that the prosecutor had "artfully" tried to cut the witness off. After conferring with advisory counsel, however, defendant moved for mistrial. The court heard argument but denied the motion without comment.

"A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions." (People v. Haskett (1982) 30 Cal.3d 841, 854; see also People v. Cooper, supra, 53 Cal.3d 771, 838-839.)

The witness's statement that she had heard defendant had been in prison was clearly improper and nonresponsive. However, the statement was brief, the witness uttered her hearsay assertion without any apparent faith in its accuracy, and the point was never touched on again. Defendant himself originally thought the statement was best left without objection, and he never did ask for any admonition to the jury to disregard it. (Cf. People v. McClain (1988) 46 Cal.3d 97, 113.) We find no abuse of discretion in denying the motion for mistrial.

F. Denial of Representative Jury

Defendant claims that at the time of his trial, jury venires in the Pomona district of Los Angeles County were not drawn from a representative cross-section of the community, in violation of his rights under the Sixth Amendment of the United States Constitution and article I, section 16 of the California Constitution. He contends that a systematic underrepresentation of Hispanic persons and young people aged 18 to 24 was caused by excuses from service for economic hardship.

"In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this

group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." (Duren v. Missouri (1979) 439 U.S. 357, 364 (hereafter Duren); see also People v. Bell (1989) 49 Cal.3d 502, 525, fn. 10.)

As for the first prong of Duren, it is established that Hispanics are a distinctive group. (People v. Howard (1992) 1 Cal.4th 1132, 1160.) We have not spoken on the question whether the young are a distinctive group; the Court of Appeal has rejected the claim a number of times (People v. Henderson (1990) 225 Cal.App.3d 1129, 1153; People v. McGhee (1987) 193 Cal.App.3d 1333, 1349, 1351-1352; People v. Marbley (1986) 181 Cal.App.3d 45, 47-48; People v. Parras (1984) 159 Cal.App.3d 875, 877; People v. Estrada (1979) 93 Cal.App.3d 76, 93), as have the majority of federal circuits. (See Wysinger v. Davis (11th Cir. 1989) 886 F.2d 295, 296, and cases cited; United States v. Potter (9th Cir. 1977) 552 F.2d 901, 905; but see Barber v. Ponte (1st Cir. 1985) 772 F.2d 982, 986-989, and cases cited.)

The parties dispute whether the second prong of Duren has been met. In support of his motion to quash the venire, defendant presented testimony by an expert showing an absolute disparity in Hispanic representation in four venires of 8.4 percent, and a comparative disparity of 51 percent.

"We have previously noted that 'the [United States] Supreme Court has not yet spoken definitively on either the means by which disparity may be measured or the constitutional limit of permissible disparity.'" (People v. Sanders (1990) 51 Cal.3d 471, 492, quoting People v. Bell, *supra*, 49 Cal.3d at pp. 527-528.)

We need not determine whether the exclusion of the young falls under the first prong of Duren, or whether defendant has shown a significant level of disparity under the second prong of Duren, because defendant has failed to establish a prima facie case under Duren's third prong by showing that the disparity he complains of was caused by systematic exclusion.

A defendant cannot carry the burden of showing a systematic exclusion "with nothing more than statistical evidence of disparity. One must, in addition, show that the disparity is the result of an improper feature of the jury-selection process." (People v. Howard, *supra*, 1 Cal.4th at p. 1160.) Defendant claims he has met this burden because his expert testified that the disparity probably arose when jurors summoned for service sought to be excused due to economic hardship.

However, defendant provided no evidence that a more lenient standard was applied to a request for excuse from service for hardship when Hispanic and young persons made the

request. Such evidence is critical to defendant's claim. "While an abuse of discretion in granting excuses for hardship might, in theory, 'upset the demographic balance of the venire' [citation], defendant cannot demonstrate systematic exclusion based upon the even-handed application of a neutral criterion, such as hardship." (People v. Howard, supra, 1 Cal.4th at p. 1160; see also People v. Morales (1989) 48 Cal.3d 527, 549.) Our review of the evidence produced at the hearing discloses that the Director of Jury Services for the Los Angeles County Superior Court attributed the underrepresentation of Hispanics primarily to the failure of those persons to respond to jury summonses, and to language problems, not to any official response to hardship excuses. Requests for hardship excuses were dealt with according to a uniform, neutral system, and there was no evidence of any lack of neutrality in administering the system for granting these excuses. The other defense expert attributed most of the underrepresentation she discovered to poverty, but did not point to any lack of neutrality in the system for granting hardship excuses. Accordingly, the trial court properly rejected defendant's motion to quash the venire.

III. PENALTY ISSUES

A. Failure to Present Case in Mitigation

Defendant presented no evidence or argument to the jury at the penalty trial.

Defendant urges that when a defendant who is representing himself openly states that he will seek the death penalty and refuse to introduce evidence in mitigation or argue to the jury, it is the obligation of the trial court to revoke the defendant's in propria persona status and appoint counsel to conduct the defense. In essence, he argues that the Eighth Amendment interest in a reliable penalty determination overcomes the defendant's Sixth Amendment interest in self-representation. (His argument, of course, contradicts the position he has taken with respect to the alleged interference with his right of self-representation at the guilt phase.)

Although it is true, as defendant argues, that defendant has no right to waive his automatic appeal from a death judgment (People v. Massie (1985) 40 Cal.3d 620, 624), or otherwise seek the state's assistance in committing suicide, it does not follow that a defendant's right of self-representation should be circumscribed as he suggests at the penalty trial. We have consistently held that the failure to present mitigating evidence at the penalty trial

does not make the proceeding unreliable in constitutional terms. (People v. Diaz (1992) 3 Cal.4th 495, 566; People v. Deere (1991) 53 Cal.3d 705, 717; People v. Lang (1989) 49 Cal.3d 991, 1030; People v. Bloom, supra, 48 Cal.3d at p. 1228, and fn.9.) "[A] verdict is constitutionally reliable 'when the prosecution has discharged its burden of proof at the guilt and penalty phases pursuant to the rules of evidence and within the guidelines of a constitutional death penalty statute, the death verdict has been returned under proper instructions and procedures, and the trier of penalty has duly considered the relevant mitigating evidence, if any, which the defendant has chosen to present.'" (People v. Diaz, supra, 3 Cal.4th at p. 566, quoting People v. Bloom, supra, 48 Cal.3d at p. 1228.) Applying this standard, we must reject defendant's claim and hold that the state's interest in assuring a reliable and fair penalty trial has been met.

Defendant argues that the public policy of the state against state-assisted suicide requires reversal of any death judgment entered after the defendant refuses to put on a case in mitigation and seeks the death penalty. However, we have rejected the claim that a court necessarily abuses its discretion in granting a motion for self-representation when the stated purpose of the motion is to obtain a verdict of death, despite the fundamental public policy against

state-assisted suicide. (People v. Bloom, supra, 48 Cal.3d at p. 1220-1223.) The Sixth Amendment teaches that we should accord the competent defendant, even in a capital case, this much control over his destiny. (Id. at pp. 1222-1223.)^{14/}

Nor have we been convinced that self-representation under the circumstances defendant describes violates public policy. "First, defendant's proposed strategy by no means ensured the return of a death verdict. . . . [A] jury might well conclude that death was 'too good' for the defendant Second, if the trier of penalty has determined death to be the appropriate punishment, and the death judgment meets constitutional standards of reliability, the judgment cannot reasonably be regarded as the defendant's doing (other than by his commission of the capital crimes) or its execution as suicide. Finally . . . defendant's argument would effectively preclude death penalty prosecution of self-represented capital defendants who decline to present mitigating evidence, as there is no effective means to compel a pro se defendant to

^{14/} Defendant casts as a separate argument the claim that the court abused its discretion when it failed to revoke his in propria persona status, and appoint counsel with directions to put on a case in mitigation. Our understanding of the high value placed on defendant's Sixth Amendment right of self-representation causes us to reject any such obligation. (See People v. Clark, supra, 50 Cal.3d at p. 617, People v. Bloom, supra, 48 Cal.3d at pp. 1222-1224; see also People v. Howard, supra, 1 Cal.4th at p. 1185; People v. Lang, supra, 49 Cal.3d at p. 1031.)

make an affirmative penalty defense." (People v. Bloom, supra, 48 Cal.3d at p. 1223.)

Defendant argues finally that the absence of a record of mitigating evidence prevents this court from carrying out its obligation to undertake a meaningful appellate review. Any deficiency of the record, however, is defendant's own doing, and he generally cannot be heard to complain of it here. (See People v. Bloom, supra, 48 Cal.3d at p. 1220; see also People v. Clark, supra, 50 Cal.3d at p. 618.) Appellate review obviously is limited to the evidence as the parties present it, and what is omitted always goes unreviewed. Any trial record has interesting silences; defendant chose not to defend at the penalty trial, and he cannot complain now that that omission inhibits our appellate review.

B. Weighing Aggravating and Mitigating Circumstances

Defendant argues next that the standard jury instruction on weighing aggravating and mitigating circumstances, like the statute it is based on, created a presumption that death was the appropriate punishment, and in fact, actually amounted to a directed verdict of death.

The court instructed in the language of section 190.3: "If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a

sentence of death. However, if you determine that the mitigating circumstances outweigh the aggravating circumstances, you shall impose a sentence of confinement in the State Prison for life without the possibility of parole."

Defendant claims that section 190.3 is unconstitutional on its face because it requires a death verdict despite a juror's view that death is not the appropriate punishment. This court and the United States Supreme Court have rejected this facial attack on the statute. (Boyde v. California (1990) 494 U.S. 370, 376-377; People v. Brown (1985) 40 Cal.3d 512, 538-541, rev'd on other grounds sub. nom. California v. Brown (1987) 479 U.S. 538.)

Similarly, we have rejected defendant's argument based on Adamson v. Ricketts (9th Cir. 1988) 865 F.2d 1011 that the statute creates a presumption in favor of death because every accused enters the penalty phase with a factor in aggravation --the circumstances of the crime, including the special circumstance finding. (People v. Duncan (1991) 53 Cal.3d 955, 978-979; People v. Andrews (1989) 49 Cal.3d 200, 230.) In Adamson v. Ricketts, supra, 865 F.2d 1011, "the accused bore the burden of demonstrating that death was not an appropriate penalty. In contrast, the instruction given here merely told the jurors that if they concluded the aggravating circumstances outweighed the mitigating circumstances, they were to impose a sentence of death; but if they determined the

mitigating circumstances outweighed the aggravating circumstances, they were to impose a sentence of confinement in the state prison for life without the possibility of parole." (People v. Andrews, supra, 49 Cal.3d at p. 230.) Our decision in People v. Andrews, supra, 49 Cal.3d 200 did not, contrary to defendant's contention, turn on the modifications of the standard instruction given in that case. As we have said in the past, section 190.3 requires the jury to make a determination whether aggravating circumstances "outweigh" the mitigating circumstances, and we interpret this language to direct the jury to apply normative standards in the weighing process. (People v. Allen (1986) 42 Cal.3d 1222, 1277; People v. Brown, supra, 40 Cal.3d at p. 541.) Thus, far from being compelled by any presumption in favor of the death penalty, "[t]he jury may decide, even in the absence of mitigating evidence, that the aggravating evidence is not comparatively substantial enough to warrant death." (People v. Duncan, supra, 53 Cal.3d at p. 979.)^{15/}

^{15/} Defendant's reliance on Odle v. Vasquez (N.D.Cal. 1990) 754 F.Supp. 749 is unavailing; the court scanned our law without determining whether the aggravation factor contained in section 190.3, factor (a) contains a presumption in favor of death, and decided that a jury instruction telling the jury that the murder verdict was not in itself an aggravating factor dispelled any danger that the jury would consider itself bound by any such presumption.

We have acknowledged, of course, that the instruction quoted above has the potential to mislead the jury. (People v. Brown, supra, 40 Cal.3d at p. 544, fn. 17.) Assuming, without deciding, the continuing vitality of Brown (see People v. Proctor (1992) ___ Cal.4th ___ [typed maj. opn. at p. 67, fn. 12]), we examine the record to determine whether the jury may have been misled to defendant's prejudice. (People v. Pinholster, supra, 1 Cal.4th at p. 968; People v. Hayes (1990) 52 Cal.3d 577, 642.)

Here, nothing in the prosecutor's argument suggested that the death penalty was mandatory whether or not the jury found the penalty appropriate, nor did the prosecutor call for a mechanical process of counting rather than weighing the aggravating and mitigating factors. Nor did the prosecutor suggest that the existence of aggravating evidence under section 190.3, factor (a) made the death penalty mandatory or presumptively appropriate. The prosecutor told the jury that it must impose the death penalty "if there are more aggravating factors or if the aggravating factors are more important than the mitigating factors." The prosecutor spoke of the jury's duty to impose the death penalty but only in the context of a balancing process that resulted in a conclusion that the aggravating circumstances outweighed the mitigating circumstances. He argued, in fact, that death was the "appropriate" penalty and that the aggravating circumstances

"overwhelmed" the mitigating circumstances. The prosecutor asked the jurors to examine their souls and "follow your own inclinations."

The defense, of course, did not focus the jury's attention on any fact in mitigation, or clarify the normative nature of the weighing process mandated by section 190.3. There was no evidence or argument presented on defendant's behalf. We have never concluded, however, that the absence of a case in mitigation requires reversal under Brown. (See People v. Howard, supra, 1 Cal.4th at pp. 1185, 1187-1189 [no mitigating evidence or defense argument]; People v. Sanders, supra, 51 Cal.3d at pp. 521-525 [same]; see also People v. Diaz, supra, 3 Cal.3d at p. 567 [no mitigating evidence, court trial]; People v. Bloom, supra, 48 Cal.3d at p. 1230 [same, jury trial].) This was not a case like People v. Crandall (1988) 46 Cal.3d 833, 884-885, in which the prosecutor misled the jury regarding its sentencing discretion and we reversed, relying in part on defendant's failure to present any argument to the jury. There, rebuttal was needed to dispel the misconceptions fostered by the prosecutor. (See also People v. Milner (1985) 45 Cal.3d 227, 253-256.) Here, by contrast, the prosecutor did not mislead the jury, and we see no reasonable likelihood that the jury was in fact misled regarding the nature of its sentencing discretion. (People v. Johnson (1992) 3 Cal.4th 1183, 1250; People v. Clair, supra, 2 Cal.4th at p. 663.)

C. Sympathy and Mercy

Defendant argues that the jury may have construed the instructions, the arguments of the prosecutor and the absence of any evidence in mitigation to mean that they could not consider sympathy for the defendant in making the penalty determination.

The court was not under a duty to instruct sua sponte that sympathy for the defendant may be considered in selecting the penalty. (People v. Williams (1988) 44 Cal.3d 883, 955.) The court gave the expanded instruction on factor (k) of section 190.3 recommended in People v. Easley (1983) 34 Cal.3d 858, 878, footnote 10. The instruction is "sufficient to advise the jury of the full range of mitigating evidence, and nothing more is required." (People v. Edwards (1991) 54 Cal.3d 787, 841-842; see also People v. Clark, supra, 3 Cal.4th at pp. 163-164.) As for the absence of any evidence in mitigation, this was defendant's tactical choice as counsel.

Our reading of the record discloses that the prosecutor said nothing to suggest that sympathy for the defendant based on any evidence in mitigation was, as a theoretical matter, inappropriate in making the penalty determination. He argued that no sympathy was due to the defendant, but not that sympathy or mercy were inappropriate considerations under the law.

Defendant claims that when the court delivered the guilt phase instructions, including the standard anti-sympathy instruction, the jury would understand that these instructions applied to the penalty phase because the court told the jury these were the instructions that applied to the case. We have held, however, that even if this instruction warning against reliance on "'mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling'" is actually delivered with the penalty phase instructions, no error occurs. (People v. Clark, *supra*, 3 Cal.4th at p. 163; People v. Gonzalez (1990) 51 Cal.3d 1179, 1225.) "Unless misled, a reasonable jury will understand that this instruction does not foreclose compassionate evaluation of the mitigating evidence, but warns only against 'factually untethered' emotion, bias, or outside pressure." (People v. Gonzalez, *supra*, 51 Cal.3d at p. 1225.)

D. Prosecutorial Misconduct

Defendant claims the prosecutor committed misconduct in closing argument to the jury by commenting on defendant's failure to express remorse or admit responsibility, and by suggesting that the absence of mitigating factors was a factor in aggravation. Respondent argues that defendant waived the claims by failing to object to any misconduct at trial; defendant argues that supporting authority had not been

decided at the time of his trial, so failure to object should be excused. Generally, we do deem such objections waived for failure to object. (See e.g., People v. Allison (1989) 48 Cal.3d 879, 902-903.) In any event, we reject the claim on the merits. The prosecutor argued that there was no reason to extend mercy to defendant because: "There wasn't a glimmer of remorse or anything we would identify as a human thought or feeling or anything in every incident we see of this man." Such a comment on defendant's remorselessness during and after the commission of the crime would not be understood, contrary to defendant's argument, as a comment on a nonstatutory factor in aggravation. (People v. Clair, *supra*, 2 Cal.4th at p. 686; People v. Gallego (1990) 52 Cal.3d 115, 197; People v. Carrera (1989) 49 Cal.3d 291, 339.) Nor is it reasonably likely the jury would have understood the prosecutor to argue that defendant's failure to confess to the charged crimes was a ground for imposing the death penalty. (See People v. Clair, *supra*, 2 Cal.4th at p. 686; People v. Miranda (1987) 44 Cal.3d 57, 112.) The prosecutor did remark that defendant had not requested forgiveness or admitted responsibility, but this was clearly in the context of the evidence of defendant's string of prior convictions for violent sex offenses, not his failure to confess to the charged crimes.

Defendant argues in a footnote that any comment on defendant's lack of remorse violated the Eighth Amendment

because it interjected a subjective and speculative matter into a proceeding that must be reliably based on reason. (See Gardner v. Florida (1977) 430 U.S. 349, 358; Woodson v. North Carolina (1976) 428 U.S. 280, 305.) It is self-evident that the Eighth Amendment, with its requirement of a reliable fact finding process, however, does not prevent the jury from evaluating subjective states of mind. The question of the defendant's remorse calls for no more speculation than the question whether, in unadjudicated prior offenses, he had the requisite level of criminal intent, or the question whether he was suffering from extreme mental or emotional disturbance, matters that are clearly within the jury's competence.

We also reject the claim that the prosecutor argued improperly that the absence of any factor in mitigation was itself a factor in aggravation. There is not a reasonable likelihood the jury would have understood the prosecutor to be arguing as defendant suggests. Rather, the prosecutor simply argued that none of the statutory factors in mitigation was present. Thus, for example, he argued that defendant did not act under extreme mental disturbance, but in a cold and calculating manner. The prosecutor was entitled to draw on the evidence to argue that a statutory factor in mitigation was not present. (See People v. Hardy (1992) 2 Cal.4th 86, 211.)

E. Double-counting Aggravating Factors

Defendant contends the jury improperly was permitted to rely on duplicative special circumstance findings as matters in aggravation. He claims that the rape-murder special-circumstance finding and the special circumstance finding of a murder in the course of a lewd act on a child actually described the same conduct, so that it was impermissible for the jury to rely on each as a separate aggravating factor under factor (a) of section 190.3.

We reject the premise. The rape and lewd-act special-circumstance findings required different elements of proof and could be separately considered. (People v. Griffin (1988) 46 Cal.3d 1011, 1030 [lewd act on a child not a lesser included offense of rape].) Defendant's entire violent course of conduct was of course relevant to the penalty determination. (People v. Melton (1988) 44 Cal.3d 713, 765-769.) In People v. Melton, *supra*, 44 Cal.3d 713, we explained that it was legitimate for the jury to infer that the defendant was more culpable because he not only robbed the victim but also committed a burglary in order to accomplish the robbery and murder. Each of the noncapital offenses involved violations of different interests of the victim, and were separately relevant. The same can be said of the two sex offenses in this case. (See also People v. Proctor (1992) —

Cal.4th ____ [typed maj. opn. at pp. 66-68; People v. Mickey, supra, 54 Cal.3d at pp. 691-692; People v. Sanders, supra, 51 Cal.3d at p. 529.)

F. Automatic Motion for Reconsideration

Defendant contends the court erred in considering evidence of the impact of the crime on the victim in ruling on the automatic motion for modification of the penalty verdict. Defendant complains that the court invited the victim's mother to speak at the hearing on the motion, and in ruling on the motion, considered her statements about the youth of the victim and her outrage at the defendant.

Defendant relies on Booth v. Maryland (1987) 482 U.S. 496; that authority has been largely overruled in Payne v. Tennessee (1991) 501 U.S. ____ [115 L.Ed.2d 720]. (People v. Thomas (1992) 2 Cal.4th 489, 535.) The impact of the crime on the family of the victim is a circumstance of the crime that is relevant to the penalty determination under section 190.3 factor (a). (People v. Thomas, supra, at p. 535.) To the extent that the victim's mother spoke of matters still barred under Booth and Payne, that is, "a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence" (Payne v. Tennessee, supra, 501 U.S. ____, ____ [115 L.Ed.2d 720, 739] fn. 2) we note that "the broad holding of Booth . . . does not extend to

proceedings relating to the application for modification of a verdict of death under section 190.4(e)." (People v. Benson (1990) 52 Cal.3d 754, 812.) Any error in considering evidence not before the jury was nonprejudicial. (See § 190.4, subd. (e); People v. Lewis (1990) 50 Cal.3d 262, 287.) We see no evidence the court was overcome by emotion as it considered the evidence. In the absence of evidence to the contrary, we assume the court is not affected by such extraneous evidence. (People v. Fauber, supra, 2 Cal.4th at p. 866.)

Defendant also claims the court erred in ruling on the motion because it double-counted aggravating factors, treated the absence of mitigating evidence as a factor in aggravation, and considered nonstatutory aggravating factors.

It is true that the court pointed to the circumstances of the charged capital crimes in aggravation twice, once under factor (a) and once under factor (b) of section 190.3. This was error. (People v. Kimble (1988) 44 Cal.3d 480, 505.) The error, however, was harmless, as there is no indication the court arrived at its determination by counting up the aggravating factors. (See People v. Karis (1988) 46 Cal.3d 612, 652-653.)

The court's reference to defendant's age was not error. "Chronological age, as such, is neither aggravating nor mitigating, but age-related inferences relevant to the choice of penalty may be argued One such permissible

inference is that the defendant is 'old enough to know better.'" (People v. Clark, supra, 3 Cal.4th 41, 170.) This was the import of the court's comment.

Contrary to defendant's claim, the court did not treat absence of evidence of extreme mental disturbance as a circumstance in aggravation. The court simply commented that defendant's cold calculation during the crimes indicated that there had been no mental disturbance. The inference to be drawn from this comment is that the court found no evidence in mitigation under factor (d) of section 190.3.

Defendant claims that the court also considered the circumstances of the crime in aggravation under section 190.3, factor (k), a factor in mitigation. The court said: "And any other circumstances [that] extenuate the gravity of the crime even though [they are] not a legal excuse for the crime. I considered that. I have considered the nature of the crime, the age of the victim, the circumstances of the victim's death. And I have considered, Mr. Stansbury, on the other side of this is the fact that you are clearly a man with some potential. [¶] You certainly had a potential at one time in your life. You're not a stupid man. You have a basic intelligence. [¶] There are multiple tragedies. The ultimate tragedy, of course, is what happened to Robyn Jackson. [¶] The other tragedy is waste of what could have been a good mind, and that was yours, Mr. Stansbury. [¶] I

have considered those and contributions that you might make or could have made."

Our reading of the record convinces us that the court referred to the circumstances of the crime as the main counterweight to the mitigation it identified under section 190.3, factor (k), that is, defendant's intelligence and sadly wasted potential. Thus the court did not indicate that the circumstances of the crime were to be considered in aggravation under both factor (a) and factor (k), but that they were the counterweight to the mitigation identified under factor (k). Further, the record in no way suggests that the court simply counted the factors in aggravation and mitigation and mechanically arrived at the result; rather, the court weighed the comparative value of the aggravating and mitigating evidence.^{16/}

G. Miscellaneous Challenges to Death Penalty Law

Defendant challenges this state's capital sentencing scheme on several constitutional grounds. He claims that the statute and jury instructions fail to provide the sentencer with constitutionally sufficient guidance because they fail to

^{16/} Defendant also argues that the court could not consider the age of the victim under any of the statutory factors in aggravation. However, the victim's age is certainly cognizable under section 190.3, factor (a), which permits the trier of fact to consider the circumstances of the offense. (See, e.g., People v. Raley (1992) 2 Cal.4th 870, 915-916.)

identify for the jury what factors are aggravating and what mitigating. This claim has been rejected repeatedly. (People v. Raley, supra, 2 Cal.4th at p. 919, and cases cited.) He also relies on Stringer v. Black (1992) 503 U.S. ____ [117 L.Ed.2d 367] to support the claim that section 190.3 is void for vagueness because it fails to guide the jury in determining whether certain factors are aggravating or mitigating. He also claims more specifically that section 190.3, factors (a) and (i) provide particularly inadequate guidance to the jury. We have recently rejected identical claims. (People v. Zapien (1993) ____ Cal.4th ____ [typed circulating opinion at pp. 83-84]; People v. Proctor, supra, ____ Cal.4th ____, [typed maj. opn. at p. 70]; People v. Tuilaepa (1992) ____ Cal.4th ____ [typed maj. opn. at pp. 35-37]; People v. Noguera (1992) ____ Cal.4th ____ [typed maj. opn. at pp. 72-73.]

Defendant claims that his state and federal constitutional rights were violated because the statute and instructions failed to direct the trier of fact to find beyond a reasonable doubt: (a) that the aggravating circumstances are true; (b) that the aggravating factors outweigh the mitigating factors; and (c) that death is the appropriate sentence. We disagree. (People v. Duncan, supra, 53 Cal.3d at p. 979.) Nor do we agree that the statute is unconstitutional because it fails to direct the jury to make a finding

as to what aggravating circumstances were found true. (People v. Sully (1991) 53 Cal.3d 1195, 1251-1252, and cases cited.) We have consistently rejected his claim that the statute is unconstitutional because it fails to require jury unanimity on the aggravating factors warranting death. (People v. Breaux (1991) 1 Cal.4th 281, 321, and cases cited.)

We have also rejected the claim that the relitigation at the penalty trial of the facts underlying a defendant's prior convictions violates due process or the Eighth Amendment, or double jeopardy. (People v. Johnson, supra, 3 Cal.4th at pp. 1240-1242; People v. Visciotti (1992) 2 Cal.4th 1, 71.)

There is no constitutional requirement that the court inform the jury that the punishment of life in prison without possibility of parole will actually be carried out. (People v. Pinholster, supra, 1 Cal.4th at p. 974; People v. Bonin (1988) 46 Cal.3d 659, 698.) Nor must the jury be instructed not to consider prior criminal activity under factor (b) of section 190.3 unless it unanimously finds the activity has been proven. (People v. Pinholster, supra, 1 Cal.4th at p. 974, and cases cited.) Finally, the death penalty statute is not unconstitutional under Godfrey v. Georgia (1980) 446 U.S. 420, 427 or Furman v. Georgia (1972) 408 U.S. 238 for failing to provide for intercase proportionality. (People v. Mincey (1992) 2 Cal.4th 408, 476;

People v. Visciotti, *supra*, 2 Cal.4th at p. 77; People v. Adcox (1988) 47 Cal.3d 207, 274.)

IV.

The judgment is affirmed in its entirety.

C O P Y

PEOPLE v. STANSBURY

S004697/Crim. 24685

CONCURRING OPINION BY KENNARD, J.

The trial court in this case refused to permit the self-represented defendant to stand mute during the trial. In this respect, the case is indistinguishable from People v. Clark (1992) 3 Cal.4th 41, in which this court held that a trial court may terminate self-representation if the pro se defendant's announced intention to stand mute is "part of a deliberate course of conduct designed to cause as much disruption as possible." (*Id.* at p. 116.) I thought this court was wrong (see *id.* at pp. 174-180 (dis. opn. of Kennard, J.)), and I continue to think so. But repetition of dissenting views is rarely justified, and therefore I "yield to the obligation . . . to live with the law as it has been stated." (Traynor, Some Open Questions on the Work of State Appellate Courts (1957) 24 U.Chi.L.Rev. 211, 219; but see also Brennan, In Defense of Dissents (1986) 37 Hastings L.J. 427, 436-437.) On the basis of stare decisis, I concur in the majority opinion.

KENNARD, J.

C O P Y

PEOPLE v. STANSBURY

S004697

CONCURRING AND DISSENTING OPINION BY MOSK, J.

I have viewed with growing concern the capital cases under our review in which the defendant has been permitted to represent himself. I have become convinced that because of the interest of society in obtaining a reliable verdict at the guilt and penalty phases of a capital trial, the defendant should not be permitted to waive counsel and represent himself if there is the slightest doubt of his competence to undertake this awesome task in a way that discharges society's interest, as well as his own. (People v. Clark (1992) 3 Cal.4th 41, 174 (dis. opn. of Mosk, J.).)

In this case, the defendant appears to be an obstreperous and cunning fool. He made it clear that his original intention was to defend in this complex circumstantial case by deliberately pointing to his prior convictions for violent sex crimes and then arguing that he had been framed because of his record. His assistant counsel and the court urged him in strong terms to abandon this strategy, since a reference to his egregious record at the guilt trial would spell his doom; any doubt the jury had about the strength of the prosecutor's case would likely evaporate. In fact, defendant did not ultimately employ this

strategy, and assistant counsel maintained a hand in the defense.

Defendant now complains that the court deprived him of the right to present the defense in his own way. My years as a trial judge, an Attorney General and nearly three decades on this court have convinced me that a defendant facing the gas chamber possesses no objectivity and little competence to act as his own counsel. Here, however, the trial court properly tempered the defendant's ability to commit judicial suicide at the guilt trial by urging him to listen to assistant counsel, and by threatening to revoke his pro se status when the defendant petulantly declared he would stand mute. Because I see the hand of the court and counsel in the presentation of the defense, I would not, as I have in other cases, urge the reversal of the guilt verdict. (Compare People v. Clark, supra, 3 Cal.4th at p. 174 (dis. opn. of Mosk, J.).)

The penalty judgment, however, should be reversed.

Defendant is a manipulator who decided, contrary to the advice of his assistant counsel, to present no evidence or argument in mitigation at the penalty trial. No mitigating evidence had previously been presented at the guilt trial. Throughout the trial defendant expressed the intention to seek the death penalty if the jury found him guilty. He bitterly chastised assistant counsel and his

investigators for pursuing any case in mitigation in preparation for the penalty trial. At the 11th hour he sought a 4- to 6-week continuance so that he could contact a witness to a 20-year-old crime and seek his admission that he, the witness, had committed the sex offenses of which defendant had been convicted. Defendant still maintained that he was seeking the death penalty, but wanted the evidence to be accurate. The trial court properly denied the motion for continuance; defendant had more than two years to find the witness. The record is absolutely clear that defendant stubbornly prohibited the presentation of any evidence in mitigation at the penalty trial. There is no indication that defendant was mentally impaired at the time of trial.

Having no sympathy with the efforts of the defendant to manipulate the legal system, and no question that the prosecutor, assistant counsel, defendant's investigators and the court made every effort to conduct a fair penalty trial in the face of defendant's obduracy, nevertheless I still would reverse the penalty verdict.

We should be concerned, not merely with the defendant, who appears on this one-sided record to be a despicable human being, but with the interest of society. It is society that is being asked to forfeit his life. I cannot find that our social interest in a reliable penalty verdict

is safeguarded in a case in which none of the available evidence and no arguments are presented on defendant's behalf. (U.S. Const., Eighth Amend.; Cal. Const., art. I., § 17; People v. Deere (1985) 41 Cal.3d 353, 360-368; see also People v. Diaz (1992) 3 Cal.4th 495, 577 (conc. & dis. opn. of Mosk, J.); People v. Howard (1992) 1 Cal.4th 1132, 1197 (conc. & dis. opn. of Mosk, J.); People v. Sanders (1990) 51 Cal.3d 471, 531-533 (dis. opn. of Mosk, J.); People v. Clark (1990) 50 Cal.3d 583, 639-641 (conc. & dis. opn. of Mosk, J.); People v. Lang (1989) 49 Cal.3d 991, 1059-1062 (conc. & dis. opn. of Mosk, J.); People v. Bloom (1989) 48 Cal.3d 1194, 1236-1245 (conc. & dis. opn. of Mosk, J.); People v. Williams (1988) 44 Cal.3d 1127, 1158-1161 (conc. & dis. opn. of Mosk, J.).)

There is no question that some mitigating evidence was available and could have been presented. The record reveals that assistant counsel and defense investigators had obtained potential mitigating evidence from family members, friends and former employers who were available to say "good things" about defendant. Assistant counsel told the court at the hearing on the automatic motion for modification that "Mr. Stansbury did have a very very hard childhood, a rough childhood where he was not living with a parent or parents for a long period of time. [¶] He was incarcerated and confined in the juvenile institutions from a very very young

age. [¶] He has suffered some considerable amount of ill health, including the loss of his leg. [¶] He has a great deal of bitterness against people because of those early years."

It is entirely defendant's fault that no evidence or argument was presented to the jury, but the consequence of his machinations was that 12 conscientious citizens had to decide whether he should live or die without being provided any reason to extend society's gift of mercy. While I agree with the majority that the prosecutor did not exploit ambiguity in the jury instructions in a way that would mislead the jury, the instructions themselves really made no sense in the context of this case. The references to weighing the aggravating against the mitigating factors, and to the mitigating evidence that defendant might proffer, were essentially meaningless because of the lack of a single piece of mitigating evidence. No jury should be placed in such an untenable position, and no death judgment based on such an unbalanced proceeding should be carried out.

I would remand for a new penalty trial at which defendant would be required to be represented by counsel who would have full control over the development and presentation of a case in mitigation. (See People v. Clark, supra, 50 Cal.3d at p. 641 (conc. & dis. opn. of Mosk, J.).)

MOSK, J.

PEOPLE v. ROBERT EDWARD STANSBURY

S004697

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TRIAL COURT: Los Angeles County Superior Court

TRIAL COURT #: A529247

The information provided here is not intended to reflect that which will appear in official reports.

C O P Y

SUPREME COURT
FILED

MAY 26 1993

Robert Wandruff Clerk
DEPUTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,)
)
Plaintiff and Respondent,)
)
v.)
)
ROBERT EDWARD STANSBURY,)
)
Defendant and Appellant.)
)

S004697

(Super.Ct. No.
A529247)

MODIFICATION OF OPINION

THE COURT:

The opinion of the court herein, appearing at
4 Cal.4th 1017, is modified as follows:

At page 1032, line 29, the phrase "large person"
is substituted in place of the phrase "big man."

This modification does not affect the judgment.

SUPREME COURT
FILED

MAY 26 1993

Robert Wandruff Clerk
DEPUTY

No. CR24685
S004697

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

THE PEOPLE, Respondent

v.

ROBERT EDWARD STANSBURY, Appellant

Petition for rehearing DENIED.
Opinion modified.



Chief Justice

MAY 26 1993

Robert Wandruff Clerk

DEPUTY

C O P Y

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

*****R E M I T T I T U R*****

TO THE SUPERIOR COURT, COUNTY OF LOS ANGELES

THE PEOPLE
RESPONDENT

VS.

STANSBURY, ROBERT EDWARD
APPELLANT

SUPREME COURT NUMBER: S004697 (Crim. 24685)
SUPERIOR COURT NUMBER: A529247

I, ROBERT F. WANDRUFF, CLERK OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE ATTACHED IS A TRUE COPY OF AN ORIGINAL JUDGMENT ENTERED IN THE ABOVE-ENTITLED CAUSE ON MONDAY, THE 8TH DAY OF MARCH, 1993.

WITNESS MY HAND AND THE SEAL OF THE COURT,
WEDNESDAY, THE 26TH DAY OF MAY, 1993.

ROBERT F. WANDRUFF,
CLERK



BY JAMESON

DEPUTY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT EDWARD STANSBURY,

Defendant and Appellant.

S004697

(Super.Ct. No.
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This modification does not affect the judgment.

BEST AVAILABLE COPY

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QUESTIONS PRESENTED

1. Whether a state court may properly determine sincerity of a pro se defendant's threatened tactic of remaining mute at trial.
2. Whether a state court can consider police officers' testimony regarding the status and focus of their investigation in determining whether a defendant is in custody for *Miranda* purposes.

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No. 93-5770

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

ROBERT EDWARD STANSBURY, Petitioner,

vs.

STATE OF CALIFORNIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA

RESPONSE IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion by the California Supreme Court is reported at 4 Cal.4th 1017, 846 P.2d 756, 17 Cal.Rptr.2d 174 (1993). The opinion was modified upon denial of rehearing at 5 Cal.4th 294d, 19 Cal.Rptr.2d [Advance Sheets No. 3 at Modifications, p. 13.] (1993).

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(3).

STATEMENT OF THE CASE

On May 22, 1985, a Los Angeles County jury convicted petitioner of the first degree murder (Cal. Penal Code § 187)^{1/} of ten-year old Robyn Jackson; lewd acts on a child under the age of 14 (§ 288(b)); rape (§ 261(2)); and kidnapping (§ 207). The jury found true the three charged special circumstances that the murder was committed in the commission of kidnapping (§ 190.2(a)(17)(ii)); in the commission of a rape (§ 190.2(a)(17)(iii)); and in the commission of a lewd and lascivious act upon a child under the age of 14 years (§ 190.2(a)(17)(v)). The jury also found true allegations that petitioner inflicted great bodily injury in connection with the noncapital offenses (§§ 1203.075, 12022.7, 12022.8) and that petitioner committed the offenses while on parole for rape and lewd acts upon a child under the age of 14 years (§§ 1203.085(a), 3000). CT 1130-1139; *People v. Stansbury*, *supra*, 4 Cal.4th at 1031, 846 P.2d at 762, 17 Cal.Rptr.2d at 180.

On May 3, 1985, the same jury returned a sentence of death. CT 1155. The court entered its judgment of death on July 15, 1985. CT 1156-1159.

Petitioner appealed. On March 8, 1993, the California Supreme Court issued its opinion affirming the judgment in its entirety. *People v. Stansbury*, *supra*, 4 Cal.4th 1017.

Petitioner does not challenge the sufficiency of the evidence to support his convictions. We therefore adopt the summary of facts from the state court opinion:

1. Unless otherwise indicated, all statutory references are to the California Penal Code.

"On September 28, 1992, defendant, a tall red-headed man with a beard, drove an ice cream truck on a sales route around the Baldwin Park neighborhood of Los Angeles. He accidentally drove the truck into a fence around 5 p.m. and he cooperated with the property owner in trying to fix the fence. The owner observed nothing wrong with defendant's truck; it appeared to operate normally. Defendant left the scene between 5:30 and 5:45 p.m. A competing ice cream truck driver also saw defendant in the neighborhood that afternoon, and again, his truck appeared to be functioning well and traveling at speed.

"[Ten year old] Robyn went to the Geddes School in Baldwin Park around 6 p.m. that evening. A neighbor saw a white ice cream truck near the school about that time, and the neighbor's son saw Robyn talking to the ice cream truck driver in front of the school. The boy looked away, and when he looked back, Robyn was not to be seen and the truck was making a U-turn and driving away. He identified the driver as a man with red hair and a beard. The child said that Robyn often talked to the ice cream truck driver and, unlike any of the other neighborhood children, received gifts of candy and ice cream from him. He identified a picture of defendant as he looked with long hair and a beard as the driver of the ice cream truck Robyn frequented.

"Beverly Allen, a gas station attendant, saw a large white ice cream truck arrive at her station about 6:30 p.m. on September 28, 1982. Her

Sears U.S.A. gas station was located in Covina, and she saw the truck arrive from the east on Arrow Highway. She saw a young man (not defendant) with blond hair buy gas and ask someone in the truck to be dropped off by the freeway. Mrs. Allen saw defendant standing by the passenger door of the truck, and observed Robyn inside, looking unhappy. Mrs. Allen was somewhat uncertain about her identification of defendant.

"Defendant did not return to his home in Pomona until 9 p.m. that evening. He borrowed his roommate's turquoise automobile around midnight, first driving it next to his truck for a few minutes. He returned around 3 a.m.

"About 1:15 a.m. Andrew Zimmerman saw the turquoise car in Pasadena. He saw a large person get out of the car, the door of which made a memorable popping sound, and throw something in a flood control channel. Mr. Zimmerman telephoned the police, who arrived about 1:30 to discover the body of Robyn in the flood control channel. Mr. Zimmerman positively identified defendant's roommate's car as the one he had seen that night.

"There was medical evidence that before her death, Robyn had been put in a cold, oxygen-deprived environment, such as an ice cream freezer. There was evidence of a rape, and there was evidence of saliva deposited by a nonsecretor on the victim's genital area and nipple. The victim was a secretor; defendant, like only 20 percent of the population,

was not. The cause of death was asphyxia complicated by blunt force trauma to the head. The coroner was of the opinion that Robyn died when her head struck the concrete floor of the flood control channel.

"Defendant spoke to the police on the night after the crime, and said he had seen Robyn the day before about 6 p.m. He said he left her about that time, and continued his route. He said his truck had not been operating properly, and he had been compelled to take a circuitous route home via the Arrow Highway, to avoid hills. He said he stopped for gas at an off-brand station on the Arrow Highway. He explained that he spent the evening watching television and dozing, and that when he woke around midnight, he borrowed his roommate's car to go get something to eat at the Sambo's restaurant on Indian Hill Boulevard in Claremont. A waitress who worked at the restaurant and was familiar with defendant testified that he had not been there that night.

"A Los Angeles County jail inmate testified that defendant told him he had offered a little girl some ice cream or candy to get her to go around and sell his wares with him. Defendant said he was being charged with the murder of this little girl. . . .

[At the penalty phase] "The prosecutor presented evidence that when defendant was 20 years old, he violently assaulted and sexually abused 2 boys, then ages 10 and 9. He threatened to kill the children, and forced one to dig a grave. Defendant was convicted of lewd conduct

with a child for these activities. Another witness described defendant's crimes against her; he offered to help her after she experienced car trouble, but instead beat her, raped her, and took her valuables. He held a knife to her back and spoke of disposing of her body. He was convicted of rape, robbery and kidnapping.

"Both witnesses spoke of their humiliation, rage and fear after these traumatic events.

"Evidence was also presented of defendant's convictions for the armed rape of a 14-year-old girl, for a later offense of kidnap and rape of an adult woman, and for possession of a firearm by an ex-felon.

"Defendant's parole officer testified that defendant told him he was unemployed. The officer testified that he would not have permitted defendant to be employed as an ice cream truck driver in light of his history of violent sexual offenses against children.

"Defendant presented no evidence and did not argue to the jury."

People v. Stansbury, supra, 4 Cal.4th at 1031-1034, 846 P.2d at 762-764, 17 Cal.Rptr.2d at 180-182.

REASONS FOR DENYING THE PETITION

I

THE STATE TRIAL COURT AFFORDED PETITIONER THE RIGHT TO CONDUCT HIS OWN DEFENSE

Petitioner represented himself at trial with the assistance of two court-appointed attorneys. 4 Cal.4th at 1036. The state trial court entertained and resolved numerous pretrial motions filed by petitioner. CT 420-856. The state trial court expressly acknowledged petitioner's right to control the defense when it addressed assistant counsel, "[E]ach of you who are assisting him must realize that the decisions that are made in this case are his decisions to make." 4 Cal.4th at 1040 n. 10, 846 P.2d at 768, 17 Cal.Rptr.2d at 186.^{2/}

Petitioner claims that the trial court interfered with his choice of tactics by threatening to replace him with counsel if he remained mute throughout the proceedings. Petitioner attempted to obtain a continuance by use of coercion, indicating that he might be forced to remain silent. RT 4101, 4164. The trial court indicated that if petitioner refused to participate in the proceedings that counsel might

2. Although petitioner complains that the trial court erroneously interfered with his purported decision to remain mute at the guilt phase, he complained in his state court appeal both that the trial court interfered with his decision to remain mute at the guilt phase and that the trial court erroneously permitted him to remain mute at the penalty phase.

"Defendant limits this claim to the pretrial proceedings and the guilt phase. As will appear, he takes the opposite position in attacking the penalty portion of the judgment, contending that in the penalty phase the court should have intervened in his case and even terminated his pro se status on its own motion." 4 Cal.4th at 1037 n. 4, 846 P.2d at 766, 17 Cal.Rptr.2d at 184.

have to take his place. RT 4158. The court was concerned with the implications of petitioner's failure to participate. The court afforded petitioner the opportunity to consider his ultimate defense since actual jury voir dire would not begin until weeks later. The trial court simply did not accede to petitioner's efforts to further delay the proceedings. The court indicated that petitioner could think about the tactics he would employ:

"I'm going to give you an opportunity to reflect on that. And I'll ask you again what your attitude is before we start the voir dire. [¶] But let us assume that I decide that maybe it is a legitimate tactic, and you were able to convince me sometime between now and then. [¶] I want you to understand how high the roll of the dice is . . . [¶] And at this point, I'm indicting that my attitude is if you persist in not expressing your desire not to present any kind of cross-examination of witnesses, that is tantamount to a conviction, it is irresponsible, I believe, on my part to allow you to proceed with that tactic. [¶] I'll give you an opportunity to respond to that if you can find some authority and convince me that I'm wrong." RT 4181 (emphasis added).

Petitioner threatened to be obstructionist; the trial court indicated that petitioner would not be permitted to disrupt the proceedings. Petitioner did not actually attempt to carry out his threat of remaining mute. Apparently he thought better of this threatened maneuver after the court denied his request for continuance. Thus, he cannot complain that he was prevented from presenting his own defense.

The state courts acknowledged that a self-represented defendant may elect to stand mute as a defense tactic.

"We have recognized that in some circumstances a defendant representing himself, unlike counsel, may elect to refuse to participate actively in his defense. (*People v. Teron*, 23 Cal.3d 103, 115 (1970); *People v. McKenzie*, 34 Cal.3d 616 (1983); see also *United States v. Clark*, 943 F.2d 775, 782 (7th Cir. 1991); *Savage v. Estelle*, 924 F.2d 1459, 1464 (9th Cir. 1990), fn. 10; *United States v. McDowell*, 814 F.2d 245, 250 (6th Cir. 1987).)" *People v. Stansbury*, *supra*, 4 Cal.4th at p. 1041, 846 P.2d at 769, 17 Cal.Rptr.2d at 187.

The state courts merely determined that petitioner did not sincerely intend to stand mute as a defense tactic during the guilt phase. See *People v. Clark*, 3 Cal.4th 41, 114-115, 833 P.2d 561, 598, 10 Cal.Rptr.2d 554, 591 (1992).

The California Supreme Court's analysis of the issue correctly looks to the legitimacy of the criminal defendant's threatened tactics. A fair reading of the record in this case does not establish that petitioner actually wanted to remain silent but rather that he attempted to manipulate the trial court into acceding to his demands.

"A reasonable inference that can be drawn from the record is that defendant never actually intended to stand mute at the guilt trial, and that his intermittent threats to do so were simply attempts to pressure the court into agreeing to his procedural demands, to delay the trial, and to interject error into the proceedings." 4 Cal.4th at 1041, 846 P.2d at 769,

17 Cal.Rptr.2d at 187.

The California Supreme Court's factual determination relating to the legitimacy of petitioner's threats does not serve as a basis for review by this Court. Although petitioner objects to the state courts' evaluation of the sincerity of his threat, the validity of petitioner's claim necessarily involves a factual resolution. The mere threat to remain mute should not preclude inquiry by the trial court or an immediate acquiescence to that extreme tactic. Where, as here, the defendant established a pattern of obstructionist behavior whenever he failed to obtain favorable rulings from the trial court, the state courts could reasonably determine from the record that petitioner's claimed threats were insincere.^{3/}

"[T]he court retains authority to determine whether defendant's expressed desire to stand mute is sincere, or whether it is an attempt to coerce the court. Here, the court went beyond that task by also expressing the opinion that defendant would not have a fair trial if he stood mute; nonetheless, the court also made it clear that defendant's reason for standing mute was not that he had no defense, or that he thought silence was the best defense, but that he was not pleased with the way things were going and thought he was sure to get a second trial where things would go his way. We see no error in a court refusing to permit a

3. The fact that petitioner's "desire to stand mute was insincere and manipulative is further demonstrated by his earlier threat to do the same thing." 4 Cal.4th at 1044, 846 P.2d at 771, 17 Cal.Rptr.2d at 189.

defendant to stand mute at trial, when that defendant is attempting to manipulate the legal system while operating under such a basic misapprehension." 4 Cal.4th at 1044, 846 P.2d at 771, 17 Cal.Rptr.2d at 189.

It is almost invariably true that the intent of a criminal defendant presents a question of fact for the trier of fact to determine. For instance, a jury must decide whether a defendant charged with burglary intended to commit larceny or some other felony when he entered the dwelling of another. Indeed, the defendant is constitutionally entitled to have this issue treated as a question of fact. *E.g., Carella v. California*, 491 U.S. 263, 265 (1989) (*per curiam*). Similarly, the state courts may reasonably determine a pro se defendant's motivation when threatening to pursue a particular course of action at trial. As this court observed, "that an issue involves an inquiry into state of mind is not at all inconsistent with treating it as a question of fact." *Miller v. Fenton*, 474 U.S. 104, 113 (1985). The state courts reasonably determined that petitioner's threats were merely efforts to manipulate the trial court's rulings.^{4/} Therefore, the state courts' findings should not serve as a basis for review by

4. The California Supreme Court contrasted the trial court's rulings at the guilt phase with its noninterference with petitioner's decision to remain mute at the penalty phase:

"In both instances at the guilt trial. . . the trial court justifiably thought that defendant was being manipulative, and that his desire to stand mute was not a sincere decision that this would be the best defense, but an attempt to interject error and delay into the proceedings. By contrast, as to defendant's decision to stand mute at the penalty trial, defendant had made it clear throughout the proceedings that if he were convicted, he would seek the death penalty, and that no defense was to be prepared."

this Court.

4 Cal.4th at 1046, 846 P.2d at 772, 17 Cal.Rptr.2d at 190.

II

**PETITIONER WAS NOT IN CUSTODY WHEN
INTERVIEWED BY THE POLICE**

Petitioner claims that statements he made to the police violated his *Miranda* rights. Petitioner further complains that the California Supreme Court applied only a subjective standard in determining whether petitioner was in custody during the interview. Neither claim has merit. Furthermore, neither issue requires review by this Court.

A. Factual Background

Baldwin Park police officer Joseph Lee was instructed by the homicide detectives in charge of the Robyn Jackson case to contact petitioner as a possible witness. RT 2030, 2032. Officer Lee was not an investigating officer in the case. RT 2030. Lee was given petitioner's address at a trailer park, and instructed to ask petitioner to go to the police station for questioning as a potential eyewitness. RT 2032, 2036. Petitioner was not a suspect in the case. RT 2032. Lee was not told to arrest petitioner if petitioner refused to be questioned. RT 2032. Lee had no information about petitioner's criminal history or prior convictions. RT 2035.

When he arrived at petitioner's trailer, Lee identified himself as a police officer and asked petitioner to go to the Pomona police department for an interview as

a possible witness.^{5/} RT 2036. Lee indicated that petitioner could drive himself or the police could provide transportation if petitioner had no means of getting to the police station on his own. RT 2036. Petitioner agreed to the interview. Lee gave him a ride in the front passenger seat of the unmarked police car. RT 2036-2037. Petitioner was not handcuffed in the car. Lee did not question petitioner. Lee accompanied petitioner to an interview room at the Pomona police station and then contacted homicide investigator Johnston. RT 2039.

On September 29, 1982, Johnston was looking for an individual who drove a turquoise automobile; Johnston had interviewed a witness who saw the driver of this automobile dump the child's body. RT 2062. The turquoise car provided the only solid link to the murderer. Johnston was attempting to locate all possible witnesses to the kidnapping, and to that end learned from a Baldwin Park police officer that petitioner had been involved in a traffic accident in the area where the child disappeared. RT 2063. Johnston had information that two ice cream trucks had been in the Baldwin Park area. RT 2089. The information he received indicated that the child had been seen near a blue ice cream truck operated by a Black male.^{6/} RT

5. Neither Lee nor the accompanying officers ever pointed their guns at petitioner and the location of Lee's weapon prevented petitioner's view of the weapon. RT 2059, 2181-2182. Furthermore, the officers holstered their firearms while Lee spoke with petitioner. RT 2052-2053.

6. Johnston testified that Donald Helmer gave information to the police that the victim was seen talking to a black male in a blue ice cream truck at about five o'clock on the evening of her disappearance. RT 2126-2128, 2148. Jeremy Ramos, a five year old, initially told the police that he last saw the victim talking to a black male in a blue ice cream truck. RT 2128-2129, 2148, 2171.

2126-2127, 2129-2130. Johnston contacted the Black driver, Yusuf Nyanganira^{2/} to interview him about his knowledge of the case. RT 2064. By contrast, Johnston asked the local officers to contact petitioner for an interview; he never indicated or even intimated that petitioner was a suspect. RT 2064, 2206. Johnston wanted to talk to petitioner because petitioner was in the vicinity of the kidnapping, not because he was a suspect. RT 2134. No homicide investigator went to petitioner's residence. RT 2033, 2039-2040. If petitioner had been a suspect, a homicide investigator would have been dispatched to assist in his apprehension. RT 2065.

After petitioner arrived at the Pomona police station, Johnston and Baldwin Police Officer Bell spoke with petitioner in an interview room.^{8/} Petitioner was not in custody or in any way restrained. Petitioner was not considered a suspect and could have left if he had so desired.^{9/} RT 2067, 2211. Petitioner never indicated that

Johnston later testified that the information he had obtained "led more specifically to a male, black having been last seen in contact with Robyn Jackson following her leaving her residence after eating dinner." RT 2250.

7. Appellant's truck was white; appellant is Caucasian. Yusuf was Black and drove a blue ice cream truck. RT 2131. Johnston accompanied four police officers to Yusuf's residence, but not to petitioner's residence.

"Johnston was more suspicious of the other driver, as he met the description the officer had of the driver seen with Robyn just before she disappeared, while defendant did not." 4 Cal.4th at 1051, 846 P.2d at 775, 17 Cal.Rptr.2d at 193.

8. Officer Bell was an observer only and not a member of the homicide investigation team. Only after suspicion had focused on appellant did Johnston summon the other two homicide investigators. RT 2138.

9. The difficulty associated with accessing detective offices after normal business hours and the officers' lack of familiarity with the facilities fully explain the choice of interview rooms. Johnston did not know if the door to the interview room was locked

he wished to leave.

Johnston had no information that petitioner was seen with the child around the time of her disappearance. RT 2171. Johnston asked petitioner about his employment and his activities the previous day. RT 2068. Johnston showed Robyn Jackson's photograph to petitioner to determine whether petitioner could give any information about her whereabouts the previous day or about any vehicles he may have seen that day. RT 2073. Johnston attempted to obtain descriptions of all individuals petitioner saw in the area in an effort to identify potential witnesses. RT 2076, 2137.

Johnston became suspicious of petitioner when petitioner referred to a turquoise automobile, the vehicle Johnston was attempting to locate. RT 2116, 2122. When petitioner told Johnston that he had access to a turquoise automobile, Johnston asked petitioner about prior arrests. Johnston did not have any information regarding petitioner's criminal history before this inquiry. RT 2078. Petitioner told Johnston that he had prior convictions for kidnapping, rape, and child molestation. RT 2079. Johnston then terminated the interview and left petitioner alone in the interview room. RT 2079. The interview lasted approximately 20 to 30 minutes. RT 2200, 2228. Johnston and the other two homicide investigators, Patterson and Riordan, reentered the room and advised petitioner of his *Miranda* rights. RT 2081. Petitioner invoked his *Miranda* rights and the detectives did not question him further. RT 2082.

when he spoke with petitioner. RT 2102. Nothing in the record indicates that petitioner would know that the room was locked when the interviewing officers were not aware of that fact.

Appellant did not testify at the suppression hearing. He did not offer any evidence to refute the police testimony.

At the conclusion of the hearing, the trial court determined that appellant was not the focus of suspicion at the time he was interviewed. He became a suspect only after he described the turquoise automobile to which he had access on the morning the body was dumped. RT 2368. The court excluded any statements made after reference to this automobile but denied the defense motion as to prior statements. RT 2368.

B. Petitioner Was Not in Custody

Petitioner was interviewed at the police station at approximately 11 p.m. on September 29, 1982. The homicide investigators were attempting to locate witnesses to the recent murder of ten-year old Robyn Jackson. The officers who accompanied petitioner to the police station were not directly connected with the investigation. They simply requested that petitioner make himself available for questioning at the police station.

Petitioner was afforded the opportunity to decide whether the police could question him. Although the officers had their guns drawn before petitioner answered the door, Officer Lee was the only officer to speak with petitioner. Officer Lee's weapon was not visible to petitioner. No evidence elicited at the hearing established that petitioner could see the other officers' weapons or that the weapons remained drawn during Lee's conversation with petitioner. Although no officer ever

pointed a gun at petitioner, petitioner complains that the officer was fully armed and uniformed. Officers routinely are both; the *important* point is that Officer Lee and Lieutenant Johnston did *not* question petitioner at gunpoint or threaten him in any way. Petitioner voluntarily agreed to the interview. He chose to ride with Officer Lee. He sat in the front seat of the police vehicle, not normal procedure for one in custody.

Officer Lee merely brought petitioner to an interview room.^{10/} RT 2056-2057. Petitioner spoke to Lieutenant Johnston about his activities. Johnston asked petitioner about individuals seen in the Baldwin Park area in an effort to locate potential witnesses. The interview was investigatory rather than accusatory in nature. Petitioner was not in custody and could have left upon request. Petitioner never indicated a desire to leave or to terminate the interview. Petitioner's statements were largely narrative and Lieutenant Johnston did not intimidate or coerce petitioner into cooperation. Questioning a witness about his activities on the day of a murder does not establish a custodial interrogation but rather an effort to investigate.^{11/}

10. The fact that the interview room was secured is not determinative but rather related to the available facilities. See *Green v. Superior Court*, 40 Cal.3d 126, 136, 707 P.2d 248, 254, 219 Cal.Rptr. 186, 192 (1985), cert. den., 475 U.S. 1087 (1986).

11. Petitioner states that no one told him that he could leave or that he did not have to accompany Officer Lee to the police station. Officer Lee, however, testified that he told petitioner that petitioner was a potential *witness* and that he could drive to the police station on his own. Implicit in this communication was the recognition that petitioner did not have to accompany the officers. Petitioner never asked the officers to permit him to leave. Nor does the law require the police to have affirmatively informed petitioner that he was free to leave. Cf. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-249 (1973). No indicum of custody other than the police station itself was present here in any event.

Petitioner seeks to require the police to give *Miranda* warnings to all witnesses interviewed at the police station because of the potentially intimidating environment. But this Court has specifically rejected this argument. Police must be permitted to interview witnesses and even potential suspects. The critical inquiry is whether the individual is in custody when the police question him.

In general, *Miranda* warnings are required prior to questioning when a person has been taken formally into custody *or* otherwise deprived of his liberty in any significant way, *or* led to believe, as a reasonable person, that he has been thus deprived. *Berkemer v. McCarty*, 468 U.S. 420, 423-424 (1984); *Oregon v. Mathiason*, 429 U.S. 492, 494-496 (1977).

"Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983), quoting *Oregon v. Mathiason*, *supra*, 429 U.S. at 495.

A non-custodial situation is not converted to one in which *Miranda* is required simply because it takes place in a coercive environment, such as a police station, since all interviews of persons suspected of crime have coercive aspects. *California v. Beheler*, *supra*, 463 U.S. at 1124.

A fair reading of the record demonstrates that petitioner voluntarily went to the police station and gave the police information about his activities. He informed

the police about individuals he saw in the area that day to permit the investigators to question other possible witnesses.

"Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But *police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.* *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody'. It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." *Oregon v. Mathiason*, *supra*, 429 U.S. at 495 (emphasis added).

Petitioner was not in custody and the indicum of formal arrest were absent.

The state trial courts' evaluation of the credibility of the officers' testimony at the suppression hearing is a factual determination not subject to review by this Court. The officers' conduct indicated that petitioner was a witness whose information was part of a murder investigation. No information or actions suggested that the police had focused on petitioner as a suspect, whose freedom would be curtailed.

"All the police officers involved testified that defendant was not

considered a suspect until that point [when petitioner mentioned the turquoise car] in the interview. Defendant was invited, not commanded, to come to the police station for an interview, and he was given the option of driving himself. . . . [T]he officers involved testified that they would have honored his refusal to come to the station, and that they would have let him go during questioning if he had so requested [A]t the time of the interview the police were following many leads. They had not decided that the perpetrator was probably the driver of an ice cream truck, let alone that it was defendant. They had only a small child's observation to connect the abduction to an ice cream truck driver, while an adult witness had actually seen the victim removed from a turquoise passenger car and flung into a ditch. Defendant's insistence that suspicion had focused on him because he was an ice cream truck driver who had been seen talking to the victim an hour before her abduction ignores the state of information available to police at the time of the interview." 4 Cal.4th at 1052, 846 P.2d at 776-777, 17 Cal.Rptr.2d at 194-195.

Petitioner was not the focus of the investigation and was not treated in a manner which indicated that he was in custody.

C. Objective Standard of Review

Petitioner complains that the California Supreme Court looked only to

the subjective intent of the officers in determining whether petitioner was in custody. The court's opinion demonstrates that the officers' knowledge and intent were relevant to a determination of whether petitioner was in fact placed in custody. Nevertheless, the state court looked to objective facts and circumstances in making its determination regarding custody.

"Defendant notes that he was on parole at the time of his encounter with the police, and that this must be considered to have strengthened his impression that he had no choice but to cooperate. But neither the officers who contacted him nor the officers who interviewed him knew he was on parole. Their conduct would not suggest *to the reasonable person* that they were exerting authority over him under the terms of the conditions of his parole. They solicited his voluntary cooperation, asked if he wanted to drive himself to the station, and conducted him there under no restraint. This was hardly an assertion of authority such that *the reasonable person* would consider there was no choice but to obey."

People v. Stansbury, supra, 4 Cal.4th at 1053, 846 P.2d at 777, 17

Cal.Rptr.2d at 195 (emphasis added).

Clearly, the California trial and appellate courts looked to the information available to the officers at the time of the interview, as well as the circumstances of the requested interview in determining that petitioner was not in fact in custody during the initial questioning. The state courts applied the appropriate standards and reached the appropriate result. Therefore, this Court need not grant certiorari on this issue.

CONCLUSION

For the foregoing reasons, respondent submits that the petition for writ of certiorari should be denied.

DATED: October 5, 1993

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL


ROBERT E. STANSBURY,)
)
Petitioner,)
)
v.)
)
STATE OF CALIFORNIA,)
)
Respondent.)
_____)

AILEEN BUNNEY, a member of the Bar of the Supreme Court of the United States states:

That her business address is 455 Golden Gate Avenue, Room 6200, in the City and County of San Francisco, State of California; that on October 5, 1993, she served a true copy of the attached Response in Opposition to Petition for Writ of Certiorari in the above-entitled matter on counsel for petitioner by placing same in envelope addressed as follows:

Robert W. Westberg
David S. Winton
Joseph A. Hearst
PILLSBURY, MADISON & SUTRO
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San Francisco, California 94104

Said envelope was then sealed and deposited in the United States Mail at San Francisco, California, with the postage thereon fully prepaid.


AILEEN BUNNEY
Supervising Deputy Attorney General

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

ROBERT EDWARD STANSBURY

Petitioner,

vs.

STATE OF CALIFORNIA

Respondent.

REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

In its response to the petition for a writ of certiorari, the State makes a number of assertions that are erroneous or unsupported by the record. This reply brief addresses those assertions.

I. THE RECORD DEMONSTRATES THAT THE TRIAL COURT PREVENTED PETITIONER FROM STANDING MUTE AT THE GUILT PHASE BECAUSE THE COURT THOUGHT THAT SUCH A TACTIC WAS "IRRESPONSIBLE" AND WOULD LEAD TO PETITIONER'S CONVICTION, NOT BECAUSE IT THOUGHT PETITIONER WAS ATTEMPTING TO COERCE A CONTINUANCE OR DISRUPT THE PROCEEDINGS.

The State makes several factual representations that distort the record regarding petitioner's stated intent to stand mute. First, the State claims that petitioner "threatened to be obstructionist" and "attempted to obtain a continuance by use of coercion" (Resp., p. 7), and that he reconsidered his strategy of standing mute only "after the court denied his request for [a] continuance." Id., p. 8. This claim is not supported by the record. At no point during the proceedings in which the trial court threatened to revoke petitioner's pro per status did petitioner request a continuance. Indeed, petitioner specifically informed the court that he "ha[d] no motions for a continuance" (RT 4119), a point the trial court later acknowledged:

[THE COURT]: What you've stated certainly is not grounds for a continuance. What you've stated is not grounds, although you haven't asked for one, is not grounds to continue, not reason enough for me not to appoint [assistant counsel] Daugherty to proceed in this matter." RT 4177 (emphasis added).¹

¹ Neither of the record citations provided by the State (Resp., p. 8) supports the State's argument that petitioner "threatened" to stand mute to obtain a continuance. At the
(continued...)

Nor, as the State maintains (Resp., p. 7), did the trial court consider petitioner's stated intent to stand mute to be "obstructionist." To the contrary, shortly before warning petitioner that conducting his defense by nonparticipation would result in termination of his pro per status, the court expressly stated that petitioner had not done anything improper. RT 4122-4123; 4148; see Pet. Cert., pp. 7-9.

Second, the State misleadingly implies (Resp., p. 8) that the trial court's threats to terminate petitioner's self-representation were only tentative, and that petitioner ultimately changed his mind about participating in the case without further coercion from the court. The State claims that the trial court did no more than offer petitioner "the opportunity" to "think about" the tactics he would employ, and that petitioner "did not actually attempt to carry out his threat of remaining mute" because "he thought better of this threatened maneuver" after the trial court allegedly denied a continuance. Resp., p. 8.

This too is incorrect. As demonstrated by the portions of the record omitted from the excerpt quoted in the State's

1(...continued)

portion of the proceedings first cited by the State (RT 4101), petitioner informed the court that he intended "to allow the court and [the prosecutor] to proceed without [petitioner's] attempting to interfere," and the court responded that, by "not participat[ing] in this matter," petitioner would "run the risk of conviction." The other record citation provided by the State (RT 4164) contains the trial court's comment that appointing another attorney would require a continuance.

brief (Resp., p. 8), the trial court ruled unequivocally that petitioner would not be entitled to stand mute. The court simply added that, if petitioner could find "persuasive" authority justifying such a course of action (in addition to Faretta and the other cases he had already cited (see RT 4181)), the court might reconsider its ruling.²

2 "[THE COURT]: In any event, Mr. Stansbury, we've gone over this and over this and over this.

If you elect not to represent yourself, [assistant counsel] Mr. Daugherty will step in and do it. That's clear.

[PETITIONER STANSBURY]: Am I being informed that I cannot represent myself by not representing myself? Not representing myself is still representing myself.

I have made that election, and I have felt that's the best tactic to take at this time; that is a trial tactic on the part of myself as a pro per inmate.

[THE COURT]: I've indicated what I've said, Mr. Stansbury. I'm going to give you an opportunity to reflect on that. And I'll ask you again what your attitude is before we start on the voir dire.

But let us assume that I decide that maybe it is a legitimate tactic, and you were able to convince me sometime between now and then.

I want you to understand how high the roll of the dice is.

And at this point, I'm indicating that my attitude is if you persist in not expressing your desire not to present any kind of cross-examination of witnesses [sic], that is tantamount to a conviction, it is irresponsible, I believe, on my part to allow you to proceed with that tactic.

I'll give you an opportunity to respond to that if you can find some authority and convince me that I'm wrong.

[PETITIONER STANSBURY]: I believe all of the authorities--

(continued...)

Contrary to the State's insinuation, the trial court never retreated from its position that petitioner would not be allowed to stand mute because such a tactic was "tantamount to a conviction of [him]self." RT 4159, 4162. Petitioner abandoned his desired strategy only when the court, on the following day, issued its ultimatum that he would not be permitted to conduct his defense by nonparticipation:

"[THE COURT]: [I]f you announce to me now that you're going to stand mute during this trial and not present any defense, not cross-examine any witnesses without considering what the evidence might be, then I am going to replace you, your proper status and appoint Mr. Daugherty." RT 4253 (emphasis added).

II. NO COURT MAY, CONSISTENT WITH FARETTA, REVOKE A DEFENDANT'S RIGHT TO REPRESENT HIMSELF SIMPLY BECAUSE IT DETERMINES THAT THE DEFENDANT'S CHOICE OF TACTICS IS "INSINCERE."

The State also argues that the state courts "merely determined that petitioner did not sincerely intend to stand mute as a defense" (Resp., p. 9), and it asserts that this "factual resolution" disposes of the issue presented for re-

2(...continued)

[THE COURT]: I'm indicating at this point what my ruling is.

If you have some other authority that I must be compelled to accept your view, I want to see that authority. RT 4180-4181 (emphasis added).

view. Resp., pp. 9, 10. This argument is flawed, both as a matter of fact and as a matter of law.

First, the trial court made no finding that petitioner was "insincere" in his choice of tactics, nor did the court find that petitioner's stated intent to stand mute constituted disruptive or obstructionist conduct. See Pet. Cert., pp. 7-8, 19-20. Indeed, the court expressly acknowledged, shortly after petitioner stated his intent to stand mute, that petitioner had not conducted himself improperly. RT 4122-4123, 4148. Although the California Supreme Court stated that the trial court "justifiably thought" that petitioner did not "sincere[ly]" desire to stand mute (Pet. Cert., Appx. A, p. 30) this determination is not supported by any factual finding by the trial court.

Second, and more fundamentally, the State's argument assumes the answer to the very question presented by the Petition; namely, whether a court may, consistent with Faretta v. California, 422 U.S. 806 (1974), force a self-represented defendant to present an affirmative defense because it does not believe in the "sincerity" or efficacy of standing mute as a defense tactic. If a court may revoke a defendant's Faretta rights on the ground that the defendant does not "sincerely" believe that standing mute is an effective defense tactic, as the California Supreme Court held here, then there is nothing to prevent a court from making the same determination about any defense tactic adopted by a self-represented defendant. Taking the

California Supreme Court's reasoning to its logical conclusion, a court should rarely, if ever, grant a defendant the right to represent himself. Since "[i]t is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts" (Faretta, 422 U.S. at 834), a court may validly determine that no defendant could "sincerely" believe that representing himself was the "best defense." Such an interpretation of Faretta would eviscerate the Sixth Amendment right of self-representation.

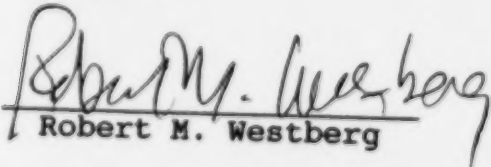
CONCLUSION

For the reasons stated in the petition for a writ of certiorari and in this reply in support thereof, petitioner respectfully requests the Court to grant the writ of certiorari.

Dated: October 28, 1993.

Respectfully submitted,

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DEC 2 1993

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of The
State Of California

JOINT APPENDIX
VOLUME I, pages 1-246

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**Petition For Certiorari Filed August 24, 1993
Certiorari Granted November 1, 1993**

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<u>Date</u>	<u>Proceedings</u>
November 23, 1982	Information filed; defendant arraigned and pleads not guilty
April 30, 1984	Defendant's Notice of Motion and Motion to Suppress Evidence Under Section 1538.5 of the Penal Code filed
June 25, 1984	Opposition to Miranda Based 1538.5 Motion filed
October 30, 1984	Hearing on Defendant's motion to suppress begins
November 5, 1984	Minute order granting in part defendant's motion to suppress
January 7, 1985	Jury selection begins
February 26, 1985	Trial by jury commences
May 22, 1985	Verdict in guilt phase of trial, defendant found guilty under Count I, California Penal Code § 187, 1st degree; Count II, Penal Code § 288B; Count III, Penal Code § 261.2; Count IV, Penal Code § 207; special circumstances and enhancement allegations found true
May 29, 1985	Penalty trial commences
May 31, 1985	Jury returns penalty phase verdict of death
July 15, 1985	Defendant sentenced to death for violations of California Penal Code

section 187; sentencing as to counts II-IV stayed

March 8, 1993 Opinion of the Supreme Court of the State of California, affirming judgment in full, filed

May 26, 1993 Order of the Supreme Court of the State of California, denying rehearing and modifying opinion, filed

May 26, 1993 Remittitur of the Supreme Court of the State of California, filed

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE	)	Case No. A 529247
STATE OF	)	NOTICE OF MOTION TO
CALIFORNIA,	)	SUPPRESS EVIDENCE
	)	UNDER SECTION 1538.5
	)	OF THE PENAL CODE
Plaintiff,)	
vs.)	
ROBERT EDWARD)	
STANSBURY)	
Defendant,)	
_____)	

TO: ROBERT PHILIBOSIAN, DISTRICT ATTORNEY
OF LOS ANGELES COUNTY, AND TO THE CLERK OF
THE SUPERIOR COURT.

NOTICE IS HEREBY GIVEN THAT on May 7, 1984, at 1:30 p.m., or as soon thereafter as the matter can be heard, at the courtroom of Department F, or such other courtroom to which said motion is assigned, the defendant will move the Court, pursuant to Penal Code Section 1538.5, for an order to suppress as evidence all tangible or intangible things obtained as a result of defendant's statement to police officers; including the defendants statements to said police officers.

This motion will be based on this notice, the pleadings, records, files in this action, and oral and documentary evidence to be presented at the hearing of the motion.

DATED: April 30, 1984

/s/ David Daugherty
DAVID DAUGHERTY
Attorney for Defendant

/s/ Anthony R. Robusto
ANTHONY R. ROBUSTO
Attorney for Defendant

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Case No. A 529247

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION TO SUPPRESS EVIDENCE.
(PENAL CODE SECTION 1538.5)
(Caption Omitted In Printing)

THE WITHIN MEMORANDUM of Points and Authorities is filed in compliance with the order of the presiding Judge of the criminal department that defendants must file such a memorandum in all 1538.5 motions ten days in advance of the hearing.

FACTS AND ISSUES

In this case, the police authorities conducted an interview with the defendant. The interview was conducted at the Pomona Police Department. The interview took place at 11:00 p.m. in downstairs interview room at the Pomona Police Department. The defendant was interviewed by Sergeant Johnston of the Los Angeles Sheriff's Department and by Detective Darlene Bell of the Baldwin Park Police Department.

At the conclusion of this interview the defendant was arrested for the charges now pending against him.

At no time prior to the commencement of said interview was the defendant advised of his "*Miranda Rights*."

The interview was terminated when the police officers conducting this interview advised the defendant of his "*Miranda Rights*."

When the defendant was advised of his "Miranda Rights" he declined to speak any further without the aid of counsel.

It is the defendant's contention that the interview of the defendant was a custodial interrogation; that the defendant was not advised of his constitutional [sic] rights prior to the commencement of the interview. Hence, the defendant's statement to the police authorities should be suppressed, as well as any and all "*Fruits of the Poisonous Tree*."

MIRANDA RULE

THE MIRANDA RULE PROVIDES A PROCEDURE FOR ENSURING THAT STATEMENTS MADE DURING CUSTODIAL INTERROGATION ARE NOT THE PRODUCT OF FORCED SELF-INCRIMINATION. IT REQUIRES THAT THE ACCUSED BE WARNED THAT HE OF [sic] SHE HAS A RIGHT TO REMAIN SILENT, THAT ANY STATEMENT MADE MAY BE USED AS EVIDENCE, THAT THERE IS A RIGHT TO THE PRESENCE OF AN ATTORNEY DURING INTERROGATION, AND THAT THE COURT WILL APPOINT AN ATTORNEY IF THE DEFENDANT CANNOT AFFORD ONE. ANY WAIVER OF THESE RIGHTS MUST BE VOLUNTARY.

In the landmark case of *Miranda v. Arizona*, (1966) 384 U.S. 436, 16 Led2d 694, 86 S. Ct. 1602 the United States Supreme Court held that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrated that procedural safeguards, effective to secure the privilege against self-incrimination, were used.

In the absence of other fully effective means to inform accused persons of their right to silence and to ensure a continuous opportunity to exercise it the following measures are required. Before any questioning begins, the accused must be warned that:

1. He or she has a right to remain silent;
2. Any statement he or she does make may be used as evidence against him or her;
3. He or she has a right to the presence of an attorney during questioning;
4. If he or she cannot afford an attorney, one will be appointed at public expense.

No amount of circumstantial evidence that the defendant was aware of the right to remain silent and was aware of the fact that anything said could be used against him or her will excuse the failure to give MIRANDA warnings as a prerequisite to custodial interrogation. *Miranda v. Arizona* (1966) 384 U.S. 436, 471-472, 16 L. ED. 2d 694, 86 S. Ct. 1602; *People v. Bennett* (1976) 58 Cal. App. 3d 230, 237, 129 Cal Rptr. 679.

Similarly, the defendant's parole status does not permit the police to interrogate the parolee about suspected criminal activity without first apprising him or her of the constitutional rights outlines [sic] in MIRANDA. *In RE MARTINEZ* (1970) 1 Cal 3d 641, 647, 83 Cal Rptr 382, 463p. 2d 734, cert den, 400 U.S. 851 (1970); *People v. Gordon* (1978) 84 Cal App. 3d 913, 922, 149 Cal Rptr 91.

CUSTODIAL INTERROGATION

CUSTODIAL INTERROGATION IS QUESTIONING INITIATED BY LAW ENFORCEMENT OFFICERS AFTER A PERSON HAS BEEN PLACED IN CUSTODY. CUSTODY OCCURS WHEN THE SUSPECT IS PHYSICALLY DEPRIVED OF HIS OR HER FREEDOM OF ACTION IN ANY SIGNIFICANT WAY, OR IS REASONABLY LED TO BELIEVE THAT HE OR SHE IS SO DEPRIVED. THE MOST IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING WHETHER CUSTODY HAS ATTACHED IN CIRCUMSTANCES [sic] SHORT OF ARREST ARE: (1) SITE OF INTERROGATION; (2) WHETHER INVESTIGATION HAD FOCUSED ON THE SUSPECT; (3) WHETHER THE OBJECTIVE INDICIA OF ARREST WERE PRESENT; AND (4) THE LENGTH AND FORM OF THE QUESTIONING.

The Miranda case itself defines custodial interrogation as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his or her freedom of action in any significant way. *Miranda v. Arizona* (Supra)

California goes a step further by holding that custody occurs if the suspect is physically deprived of his or her freedom of action in any significant way or is reasonably led to believe that he or she is so deprived. *People v. White* (1968) 69. Cal 2d 751, 760, 72 Cal Rptr. 873, 446 P. 2d 993 Cert. den., 355 U.S. 846 (1957); *People v. Arnold* (1967) 66 Cal 2d 437, 448, 58 Cal Rptr. 115, 426 P. 2d 515; *People v. Superior Court (Tunch)* (1978) 80 Cal App 3d 665, 670, 145 Cal Rptr 795; *People v. Herdan* (1974) 42 Cal App ed 200, 306, 116 Cal Rptr. 641.

In fact there is no requirement that the suspect testify to this belief if the evidence shows clearly that a reasonable person could have believed that custody had occurred. *People vs. Herdan* (1974) 42 Cal App 3d 300,307, 13, 116 Cal Rptr. 641.

A suspect who is arrested is unquestionably in custody, and MIRANDA warnings are mandatory. *People v. Manis* (1969) 268 Cal App 2d 653, 663-669, 74 Cal Rptr. 423.

On the other hand, a suspect who is merely subjected to an investigative detention is not in custody, and need not be given MIRANDA warnings. *In RE JAMES M.* (1977) 72 Cal App 3d 133, 137, 139 Cal Rptr. 902.

There are situations, bordering between formal arrest and investigative detention, in which a person must be considered to be in custody for purposes of the MIRANDA requirements *IN RE JAMES M.* (Supra)

FACTORS TO BE CONSIDERED

THE MOST IMPORTANT FACTORS TO BE CONSIDERED IN DETERMINING WHETHER CUSTODY HAD ATTACHED IN CIRCUMSTANCES SHORT OF ARREST ARE:

- (1) SITE OF INTERROGATION:
- (2) WHETHER THE INVESTIGATION HAD FOCUSED ON THE SUSPECT:
- (3) WHETHER THE OBJECTIVE INDICIA OF ARREST WERE PRESENT: AND
- (4) THE LENGTH AND FORM OF QUESTIONING.

People v. Blouin (1978) 80 Cal App 3d 269, 283, 145 Cal Rptr. 683. *People v. Herdan* (1974) 42 Cal App 3d 300, 306-307, 116 Cal Rptr 641.

SITE OF INTERROGATION

The site of the interrogation is an important factor to be considered in determining whether or not a suspect, not yet arrested, was in custody for purposes of MIRANDA warnings.

Generally speaking, on-the-scene, questioning which takes place on the street or near the location of a criminal incident is less likely to be viewed as custodial interrogation than questioning in a place controlled by the law enforcement officer, such as a police station.

In this regard, *People v. Hill* (1974) 12 Cal 3d 731, 767, 117 Cal Rptr. 393, 528 p. 2d 1, may be compared with *People v. Superior Court (Tunch)* (1978) 80 Cal App. 3d 665, 670, 145 Cal Rptr. 795.

In *People v. Hill*, a statement made to a law enforcement officer during the course of an on-the-scene pat-down was held admissible despite the lack of MIRANDA warnings, while in *People v. Superior Court (Tunch)* custodial interrogation was found when a police officer invited the registered owner of a hit-and-run vehicle into a police interview room after spotting him outside the station, and asked him questions about the location and condition of the vehicle.

INVESTIGATION FOCUSING ON SUSPECT

Under the Pre-Miranda rules of *Escobero v. Illinois* (1974) 378 U.S. 478, 484-486, 12 L. Ed. 977, 84 S. Ct. 1758 and *People v. Dorado* (1969) 70 Cal 2d 711, 721, 76 Cal Rptr 391, 452 P. 2d 607, 697 U.S. 944 (1970) a suspect was entitled to be warned of the right to counsel when the investigation reached the accusatory stage.

An important element of the accusatory stage was that the investigation was no longer a general inquiry into an unsolved crime, but had begun to "focus" on a particular suspect. *People v. Morse* (1969) 70 Cal 2d 711, 722, 76 Cal Rptr. 391, 452 P. 2d 607, 397, U.S. 944 (1970).

Since Miranda, the courts have generally stated that the test is simply whether the suspect is in custody and not whether the investigation has focused on the person interrogated. *People v. Murphy* (1972) 8 Cal 3d 349, 362, 105 Cal Rptr. 138, 503 P. 2d 594, 414 U.S. 833. *IN RE JAMES M.* (1977) 72 Cal App 3d 133, 136, 139 Cal Rptr 902.

However, as one court noted, focus remains an element in deciding whether custody has taken place. *People v. Herdan* (1974) 43 Cal App. 3d, 300, 307, 116 Cal Rptr. 641. Not surprisingly, some courts continue to discuss focus in determining whether MIRANDA warnings are required. *People v. Wolf* (1978) 78 Cal App 3d 735, 743, 144 Cal Rptr. 344.

OBJECTIVE INDICIA OF ARREST

The subjective intent of the interrogator to arrest the suspect is not in itself a sufficient basis upon which to

conclude that custody exists although such intent can be factor in persuading the court that custody existed or that a reasonable person could have believe [sic] he or she was in custody. *People v. Kelly* (1967) 66 Cal 2d 232, 246, 57 Cal Rptr. 363, 424 P. 2d 947. *People v. Herdan* (1974) 42 Cal App 3d 300, 306, 116 Cal Rptr. 641.

NATURE OF QUESTIONING

The duration and form of the questions posed by the interrogator are important factors in determining whether a given encounter between police and a suspect constituted custodial interrogation. The longer the period of questioning, the more likely it will be found to be coercive and custodial. Likewise, the more accusatorial the questioning, the more likely it will be deemed coercive. *People v. Herdan* (1974) 42 Cal App 3d 300, 307, 116 Cal Rptr. 641.

FRUITS OF POISONOUS TREE

WONG SUN v. UNITED STATES (1963) 371 U.S. 471, 488, 9L Ed 441, 83 S. Ct. 407, stand for the principal that extrajudicial statements procured as the result of an illegal arrest are inadmissible and must be suppressed if nothing occurs to attenuate or dissipate the taint of such illegalities. Based on this concept and legal principle the defense is arguing that if the Court finds that the statement made by the defendant should be suppressed than the information and evidence acquired as a result of this statement should be classified as "Fruits of the Poisonous [sic] Tree" and additionally suppressed.

California Courts have held that incomplete MIRANDA warnings render the defendant's statements and their fruits inadmissible. *People v. Banks* (1970) 2 Cal 3d 127, 133-135, 84 Cal Rptr 367, 465 P. 2d 263.

Sometimes an unlawful confession or admission will lead to a search that produces tangible evidence. In such a case the search and seizure is illegal, and the evidence it produces may be challenged under the statutory suppression mechanism provided in Penal Code Section 1538.5. In such a situation, the issue of the propriety of the statement itself must be determined as a part of the suppression motions. *People v. Superior Court (Zolnay)* (1975) 15 Cal 3d 729, 734-735, 125 Cal Rptr. 798, 542 P. 2d 1390, 429 U.S. 816.

DATED: April 30, 1984

Respectfully Submitted,

/S/ _____
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/S/ Anthony R. Robusto
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNT OF LOS ANGELES

(Caption Omitted In Printing)

NO. A529247

OPPOSITION TO MIRANDA BASED 1538.5 MOTION

Defendant's Penal Code Section 1538.5 motion based on alleged violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) is not properly taken, as the statement in question was not the result of a "custodial interrogation."

In the case at bar, the defendant, along with other ice cream truck operators were being contacted by investigators to determine what information, if any, they had concerning the kidnapping and murder of Robyn Jackson. Defendant was interviewed on September 29, 1982, one day after the crime at Pomona Police station by one set of investigators and at the same time, another ice cream truck driver, Yusuf Ngangania, was also being interviewed by different investigators. Police interest in ice cream drivers was prompted as no known witness to the abduction had yet been uncovered and there was vague information about the victim being seen with a black ice cream truck driver before her disappearance.

Only information known at the time of defendant's first interview connecting him to this crime was a traffic accident report taken some 30-45 minutes before the disappearance, placing defendant's ice cream truck some 3 to 4 blocks away from probable location of abduction point. Although police were aware of the driver of a turquoise sedan (American made) was seen dropping victim's body into a drainage ditch in Pasadena at approximately 1:30 a.m. on September 29, 1982, there was

no information connecting this defendant to that activity. Further, police had not attempted to find out anything about defendant's prior criminal record until well into this first interview.

The defendant was contacted at his residence in the City of Pomona on September 29, 1982 and asked to go to the Pomona Police station, some 4-5 blocks away from his residence to answer questions concerning his knowledge of the victim's disappearance. The defendant was not arrested, his parole status, a prior record, was not even known of at that time, nor was any threat made to the defendant concerning his freedom of movement. The defendant, in fact, voluntarily responded to the police station for the purpose of answering police questions. Should be noted that the defendant was living out of his ice cream truck and parked next to a trailer used by three other people, neither location could be called suitable for purposes of questioning possible witnesses.

Initial questioning of defendant without Miranda warnings dealt with his knowledge of activities in Baldwin Park at the time of victim's disappearance. Defendant voluntarily answered questions and freely told police general information of movement of his truck on the day in question [sic], observations of victim on day in question, information and description of ther [sic] ice cream truck drivers he saw in the area and also defendant's own activity of borrowing a car later that same night. It was only after defendant described the car he borrowed at midnight on the day in question as a 2-door Chevelle, turquoise in color, did police even inquire as to defendant's prior criminal history.

Only after defendant related his lengthy history of sex crimes, borrowing of similarly described car as one used in dumping of body, together with defendant's known presence at and near time of abduction was defendant first viewed as a suspect in the crime. At this point, officers then ceased questioning, and after a short break, attempted to interview defendant as a possible suspect and gave defendant full Miranda warnings which defendant invoked and all questioning ceased by these officers.

NO REQUIREMENT FOR MIRANDA WARNING UNDER FEDERAL LAW

United States Supreme Court has rules that Miranda warnings need not be given to defendants questioned at police stations, even if prior to such questioning the individual was clearly a suspect in the crime. Specifically the court ruled in *Oregon v. Mathieson*, 429 U.S. 492, 495, 50 L.Ed.2d 714, 719 (1977) as follows:

" . . . police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the stationhouse, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited."

The fact of *Mathieson*, supra, show a calculated interview of a potential suspect arranged to be conducted in

police environment. Specifically, in that case, police suspected that defendant of committing a burglary, and knowing he was on parole left word for the defendant to call them. After defendant called, the police asked him to come down to the station for interview, which was completed in a closed room, without Miranda warnings. Defendant was told that he was a suspect and although not going to be arrested, he was falsely told his fingerprints were found at burglary scene and that his cooperation could only help. Defendant then admitted crime and a subsequent fully Mirandized confession was typed. In our case, the defendant was not even a suspect when first talked to and all conversation was the result of defendant's voluntary presence.

EVEN UNDER DEFENDANT'S DEFINITION, HE WAS NOT SUBJECTED TO CUSTODIAL INTERROGATION

Defendant's motion, while citing only California cases despite the effect of Proposition 8, sets out four factors to be explained. The cases cited do not indicate how these factors are to be weighed or how the facts of this case apply. Although a matter for the trial court to [sic] determine, People believe it is clear that the "focus of suspicion" had not fallen upon the defendant prior to the interview and that the objection indicia was clear that defendant was not under arrest or in custody.

The types of questions clearly showed a pattern of seeking out information concerning movements of other possible people in the area as well as the victim's actions and were not accusatory in nature but simply asking a witness to relate what he knew of events in question. The

case of *In Re Danny G.*, 121 Cal.App.3d 44 (1981) dealt with a similar situation when police had even more suspicious evidence pointing to defendant but Miranda warnings were not required because as court stated:

"The police did no more than give the appellant the opportunity to explain away suspicious circumstances and, hopefully, to cooperate with them in their efforts to apprehend the true culprit."

In that case the court found the questioning was voluntarily entered into by defendant and was nonaccusatorial. Along the same lines, *Peo. v. Salinas*, 131 Cal.App.3d 925 (1983) involved a defendant who police indicated they suspected of child abuse but nevertheless, without Miranda warnings, asked defendant questions concerning injuries on the victim child and how they got there. Police later took defendant to hospital and additional questions about injuries were later asked by doctors there. Court held that even though the focus of suspicion had fallen on the defendant and even though defendant later taken to the hospital, that the question did not require Miranda warnings, that police had right to detain defendant and ask questions which were not accusatory in nature, but just giving defendant opportunity to explain injuries. Clearly, the questions before this court are of the same type, nonaccusatory, as defendant was not even a suspect.

The only factor which defendant seems to push is "site of interrogation." As noted previously the United States Supreme Court in *Mathieson*, *supra*, seemed to limit the importance of this factor, if there was voluntary compliance by the suspect or witness. In *Peo. v. Carter*, 117

Cal.App.3d 546 (1982), defendant had gone to police station to visit a prisoner when police detected possible crime, and asked defendant to step into office area for questioning which produced admissible statement without prior Miranda warning. Here, clearly, court indicated no custodial investigation despite defendant being asked questions in police station and after suspicion had fallen on her.

California Supreme Court in *Peo. v. Sam*, 71 Cal.2d 194 (1969) indicated a situation where defendant first interviewed at scene and later asked to come to police station for more questions that such procedure was not inherently coercive or necessarily a custodial interrogation. Specifically, while court ordered a re-trial, the test indicated was simply, whether or not the questioning was done without compulsion or restraint on defendant and without suspicion focusing specifically on the defendant.

In the case at bar, much like *Sam* and *Mathieson*, the defendant came to the police station voluntarily and in this case the condition and size of defendant's residence, certainly indicates the police station to be a much more feasible location to conduct any interview of any witness. Further, the methods and types of questions showed that there was no confrontations, threats, or accusations made of defendant during the initial questioning. Up until that time no Miranda warnings were required and only after police gained information from defendant's volunteered statements did the focus of suspicion fall on him and subsequent invocation [sic] of rights terminated the interview.

In conclusion, People are seeking to admit only the volunteered, apparently exculpatory, statement of defendant made to police prior to his becoming viewed as a suspect, at which time defendant was immediately advised of Miranda rights and invoked.

DATED this 25th day of June, 1984.

Respectfully submitted,
ROBERT H. PHILIBOSIAN
District Attorney

By /s/ Richard Burns III
RICHARD D. BURNS, III
Deputy District Attorney

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)	
PLAINTIFF-RESPONDENT,	)	SUPERIOR
vs.	)	COURT CASE
ROBERT EDWARD STANSBURY,	)	NO. A529247
DEFENDANT-APPELLANT.)	
)	

APPEAL FROM THE SUPERIOR COURT OF
LOS ANGELES COUNTY HONORABLE
JAMES H. PIATT, JUDGE PRESIDING
REPORTERS' TRANSCRIPT ON APPEAL

[2023] NOW, WE'RE ON THE MIRANDA ISSUE, IS THAT CORRECT?

MR. BURNS: YES, YOUR HONOR.

I WOULD INDICATE TO THE COURT THAT THE FIRST WITNESS THAT I INTENDED TO CALL, OFFICER LEE, I JUST PASSED IN THE HALLWAY ABOUT TEN MINUTES AGO.

HE INDICATED HE WAS HAVING SOME TROUBLE, APPARENTLY HIS AUTOMATIC ANTENNA ON HIS CAR WOULD NOT SHUT UP. I TOLD HIM TO BE IN COURT TEN MINUTES AGO.

MR. ROBUSTO: HE WAS OUTSIDE THREE MINUTES AGO.

MR. BURNS: IF I MAY HAVE A MOMENT TO SEE IF HE IS OUTSIDE.

JOSEPH LEE, +
A PEOPLE'S WITNESS, HAVING BEEN FIRST DULY
SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR
THAT THE TESTIMONY YOU MAY GIVE IN THE
CAUSE NOW PENDING BEFORE THIS COURT SHALL
BE THE TRUTH, THE WHOLE TRUTH AND NOTHING
BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESS
STAND AND STATE YOUR NAME FOR THE RECORD
AND SPELL YOUR LAST NAME.

THE WITNESS: JOSEPH LEE, L-E-E.

THE CLERK: I'M SORRY. I DID NOT HEAR
YOUR NAME.

THE WITNESS: JOSEPH LEE.

THE CLERK: L-E-E?

MR. DAUGHERTY: YES, SIR.

[2024] THE COURT: MR. BURNS, BEFORE
YOU PROCEED WITH YOUR MOTION, COULD YOU
GIVE ME A BRIEF OUTLINE OF THE TYPE OF TESTI-
MONY OR THE SITUATION SURROUNDING THE TES-
TIMONY THAT IS THE SUBJECT OF THIS MOTION.

MR. BURNS: YES, YOUR HONOR. MY
UNDERSTANDING IS THE DEFENSE HAS LODGED A
MIRANDA -

THE COURT: I'M SORRY, IS THERE A
MOTION - MR. DAUGHERTY, IT IS YOUR MOTION.

MR. DAUGHERTY: WHAT I THINK WHAT
THE EVIDENCE WILL SHOW DURING THE CONDUCT
OF THIS MOTION IS VERY SIMPLY THAT ON SEPTEMBER
29TH, 1982, MR. STANSBURY WAS CONTACTED
BY POLICE OFFICERS REGARDING THIS CASE.

THAT AT THE POMONA POLICE DEPARTMENT A
RATHER EXTENSIVE INTERVIEW WAS CONDUCTED
WITH MR. STANSBURY.

NO ADVISEMENT OF RIGHTS; NO MIRANDA
WAIVERS UNTIL THE CONCLUSION OF A LENGTHY
CONVERSATION, AT WHICH TIME THE OFFICERS,
AFTER THE CONVERSATION, DID ADVISE MR. STAN-
SBURY OF HIS MIRANDA RIGHTS AND REFUSED TO
TALK ANY FURTHER.

OUR CONTENTION IS GOING TO BE THAT MIR-
ANDA RIGHTS SHOULD HAVE BEEN GIVEN TO HIM
PRIOR TO THE TAKING OF THE STATEMENT AT THE
POMONA POLICE STATION.

DEFENDANT STANSBURY: AT THIS TIME, YOUR
HONOR, I WOULD OBJECT TO THE CONTINUING OF
THIS PARTICULAR MOTION ON THE GROUNDS
THAT I HAVE SPECIFICALLY REQUESTED THE PRES-
ENCE OF SEVERAL WITNESSES.

I HAVE NOT BEEN INFORMED IF THOSE WIT-
NESSES HAVE BEEN OBTAINED, LOCATED OR ANY-
THING ELSE AT THIS TIME.

[2025] IT IS MY UNDERSTANDING THAT ONE OF
THEM HAS BEEN LOCATED AS RECENTLY AS YES-
TERDAY.

I BELIEVE THAT WOULD BE WILLIE MILLER, WHOM I BELIEVE IS A MEMBER OF THE SHERIFF'S DEPARTMENT.

I DID REQUEST THAT JOSEPH LEE, SERGEANT HIGGENBOTHAM, PATRICIA MULCAHY AND CATHY GRAY BE PRESENT DURING THE MIRANDA HEARING.

I BELIEVE THAT MR. BURNS SPECIFIED AT THAT TIME THAT PATRICIA MULCAHY WAS SOME TYPE OF A CADET OR SOMETHING; AT WHICH TIME I SPECIFIED THAT CADET OR OTHERWISE, SHE WAS THERE.

THEREFORE, HER TESTIMONY, I BELIEVE, WOULD BE RELEVANT IN THIS ISSUE.

MR. BURNS CLARIFIED THAT AT THAT TIME THAT IF WE WOULD GIVE HIM THE NAMES OF THE INDIVIDUALS INVOLVED, THAT HE WOULD ATTEMPT TO HAVE THOSE INDIVIDUALS HERE.

I NOTICE JOSEPH LEE IS HERE TODAY.

I DON'T KNOW IF SERGEANT HIGGENBOTHAM OR CATHY GRAY OR PATRICIA MULCAHY ARE HERE OR NOT.

I HAVE NOT BEEN ABLE TO FIND OUT THOSE PARTICULAR AREAS OF INVESTIGATION, WHETHER IT HAS BEEN DONE OR NOT.

THE COURT: WELL, DOES THE DEFENSE WISH TO PROCEED WITH THIS MOTION? WOULD YOU LIKE TO HAVE A CONFERENCE AT THIS TIME?

MR. DAUGHERTY: WELL -

(COUNSEL CONFER IN SOTTO VOCE.)

DEFENDANT STANSBURY: I JUST CLARIFIED MYSELF AS [2026] THE DEFENSE.

I AM OBJECTING TO THE MOTION BASED ON THE FACTS THAT TO MY KNOWLEDGE THESE WITNESSES ARE NOT AVAILABLE AT THIS MOMENT.

I'M ATTEMPTING, I GUESS YOU MIGHT SAY, TO OBTAIN INFORMATION WHETHER THEY ARE OR NOT.

I COULD SEE THE PRESENCE OF MR. LEE, BUT I DON'T SEE ANY OTHERS.

THE COURT: I DON'T CARE ONE WAY OR THE OTHER, IF YOU PROCEED WITH THE MOTION OR NOT.

IF YOU FEEL IT IS AN APPROPRIATE MOTION TO BRING, YOU MAY BRING IT.

MR. DAUGHERTY: WELL, WE ARE PREPARED TO GO FORWARD WITH THE MOTION AND - THE WITNESS I THINK I INDICATED AS RECENTLY AS YESTERDAY THE WITNESSES I FELT WERE NECESSARY FOR THE MOTION, ONE OF THEM BEING LEE, AND ONE OF THEM BEING SERGEANT JOHNSTON AND ALSO DETECTIVE BELL.

I BELIEVE ALL THREE OF THOSE PERSONS - AT LEAST THEY'VE BEEN IN THE COURTHOUSE TODAY BECAUSE I'VE SEEN THEM.

I'M PREPARED TO PROCEED WITH THE MOTION.

MR. STANSBURY, I THINK, HAD ASKED ME TO CONDUCT THE HEARING ITSELF, AND I'M PREPARED TO PROCEED NOW WITH OFFICER LEE.

I BELIEVE MR. STANSBURY HAS A COUPLE OF ADDITIONAL WITNESSES HE WISHED TO CALL AS PART OF THE DEFENSE PORTION OF THE MOTION.

THE COURT: IF THOSE WITNESSES ARE AVAILABLE, YOU [2027] MAY CERTAINLY CALL THEM.

MR. BURNS: YOUR HONOR, JUST TO CLARIFY FOR THE RECORD.

I BELIEVE I OFFERED TO BE OF ASSISTANCE FOR COUNSEL IN BRINGING CERTAIN WITNESSES HERE AND SPECIFY THAT I COULD ASSIST IN MAKING PHONE CALLS TO THOSE PEOPLE WHO I KNEW OF, AND SPECIFICALLY INDICATED THAT PATRICIA MULCAHY I HAD NO CONTACT WITH.

AND I BELIEVE THE COURT, AS THE COURT WILL RECALL, INDICATED TO THE DEFENSE THAT THEY WOULD HAVE TO ATTEMPT TO LOCATE THEM ON THEIR OWN.

FOR EDIFICATION OF THE PEOPLE HERE, JOSEPH LEE IS HERE. SERGEANT JOHNSTON, SITTING NEXT TO ME. AND DETECTIVE BELL IS OUT IN THE HALLWAY OR SOMEWHERE IN THIS BUILDING TODAY TO TESTIFY.

AND AS TO THE OTHER WITNESSES, THEY HAVE BEEN HERE ON VARIOUS DIFFERENT DAYS.

I'M PREPARED TO PROCEED.

I BELIEVE DEFENSE COUNSEL OR SOMEONE ON BEHALF OF MR. STANSBURY MADE A MIRANDA MOTION.

I AM PREPARED TO PUT ON MY PART OF THE MIRANDA MOTION.

CERTAINLY THE DEFENSE CAN CALL WHOEVER THEY WISH TO CALL IN RESPONSE.

THE COURT: ALL RIGHT. I'M GOING TO DIRECT THAT THE MIRANDA PROCEEDINGS START NOW.

THOSE OTHER WITNESSES, WHEN THEY ARE AVAILABLE, THEY MAY BE HERE. I DON'T KNOW.

[2028] WHEN THEY'RE AVAILABLE, YOU MAY CALL THEM, AND I WILL HEAR THEIR TESTIMONY.

MR. DAUGHERTY: I WOULD INDICATE, YOUR HONOR, MR. STANSBURY WOULD REQUEST IF MR. BURNS CAN DO SO, APPRECIATE IT IF WE COULD HAVE OFFICER HIGGENBOTHAM AND CATHY GRAY PRESENT TOMORROW, IF POSSIBLE.

DEFENDANT STANSBURY: AND WILLIE MILLER, YOUR HONOR.

MR. BURNS: I PREVIOUSLY INDICATED I DON'T KNOW WHO WILLIE MILLER IS. I DON'T KNOW WHERE SHE IS CONNECTED WITH THIS CASE.

MR. DAUGHERTY: WILLIE MILLER IS CURRENTLY ASSIGNED TO THE SAN DIMAS STATION AS A DEPUTY SHERIFF, I UNDERSTAND.

MR. BURNS: I'LL ATTEMPT TO MAKE A PHONE CALL TO SAN DIMAS TO REQUEST THAT OFFICER WILLIE MILLER BE HERE, BUT I HAVE NO IDEA WHO SHE IS OR WHAT HER CONNECTION IS.

THE COURT: IS WILLIE A HE OR A SHE?

MR. DAUGHERTY: SHE.

MR. BURNS: THAT'S THE BEST I CAN DO.

DEFENDANT STANSBURY: WOULD THERE BE SOME WAY THEN THAT WE COULD HAVE DISCOVERY HONORED TO OBTAIN THE ADDRESS OF CATHY GRAY SO THAT INVESTIGATORS CAN SERVE A - I MEAN PATRICIA MULCAHY TO SERVE A SUBPOENA ON HER.

MR. BURNS: I DON'T KNOW WHERE PATRICIA MULCAHY IS, AND THERE HAS BEEN NO OFFICIAL REQUEST FOR HER BEFORE.

THE COURT: ALL RIGHT. WHICH DEPARTMENT IS THAT WHERE SHE WAS A RIDE ALONG OR A STUDENT?

[2029] MR. BURNS: I BELIEVE SHE WAS A RESERVE WITH BALDWIN PARK POLICE DEPARTMENT BACK IN DECEMBER OF 1982.

WHETHER SHE WAS TERMINATED AND WHAT THE CIRCUMSTANCES THEREOF AND WHERE SHE CURRENTLY IS, I HAVE NO INFORMATION.

THE COURT: HAVE YOU ATTEMPTED TO HAVE YOUR INVESTIGATOR TO FIND HER?

MR. DAUGHERTY: I'M NOT CERTAIN IF HE HAS OR NOT, MR. BENART IS ATTEMPTING TO.

THE COURT: IF YOU WOULD MAKE AN INQUIRY BETWEEN NOW AND TOMORROW; ASK EACH DEPARTMENT TO NOTIFY US AS TO THE WHEREABOUTS OF THOSE INDIVIDUALS AND IF POSSIBLE HAVE THEM HERE TOMORROW.

MR. BURNS: I CAN ATTEMPT TO HAVE CATHY GRAY AND HIGGENBOTHAM.

I WILL CALL SAN DIMAS TO REQUEST FEMALE OFFICER WILLIE MILLER TO BE PRESENT AS WELL, ALTHOUGH I DON'T HAVE HER I.D. NUMBER. I DON'T KNOW WHETHER SHE'S ON DUTY OR WHAT HER SITUATION IS.

WITH REGARDS TO PATRICIA MULCAHY, I HAD REQUESTED OF MR. HIGGENBOTHAM TO LOCATE HER. I BELIEVE IT WAS SOMETIME LAST WEEK, THURSDAY OR FRIDAY AS A COURTESY.

ALTHOUGH I WAS NOT OBLIGATED TO, AND MR. HIGGENBOTHAM TOLD ME YESTERDAY HE COULD NOT FIND HER BASED ON HIS EFFORTS.

I DON'T KNOW WHAT HE'S DONE, SHE WAS NOT CONNECTED WITH THIS CASE AT ALL UP UNTIL NOW.

OTHER THAN THAT, I HAVE NO OTHER INFORMATION [2030] I CAN GIVE COUNSEL WITH REGARD TO HER LOCATION OR WHEREABOUTS.

THE COURT: ALL RIGHT, YOU MAY PROCEED.

DIRECT EXAMINATION +

BY MR. BURNS:

Q. MR. LEE, DIRECTING YOUR ATTENTION TO SEPTEMBER 29TH OF THE YEAR 1982. WHAT WAS YOUR OCCUPATION ON THAT DAY?

A. POLICE OFFICER FOR THE CITY OF BALDWIN PARK, ASSIGNED TO UNDERCOVER INVESTIGATIONS.

Q. ON THAT DATE DID YOU HAVE OCCASION TO RESPOND TO THE POMONA AREA TO ASSIST IN A THEN HOMICIDE INVESTIGATION?

A. YES, I DID.

Q. WERE YOU AN INVESTIGATING OFFICER ON THAT CASE?

A. NO.

Q. DO YOU KNOW WHO WAS IN CHARGE OF OR WHO WAS THE INVESTIGATING TEAM WHO WAS RUNNING THE CASE AT THAT TIME?

A. SERGEANT JOHNSTON FROM LOS ANGELES SHERIFF'S HOMICIDE.

Q. WERE YOU JUST THEN IN AN ASSISTING CAPACITY, FUNCTIONING AS ASSISTING CAPACITY AT THAT TIME?

A. YES.

Q. NOW AT THAT TIME, WERE YOU IN UNIFORM OR NOT IN UNIFORM?

[2031] A. I WAS IN CIVILIAN CLOTHES.

Q. AND WERE YOU DRIVING A CAR THAT YOU HAD YOURSELF?

A. YES.

Q. WHAT SORT OF CAR WAS IT?

A. IT WAS AN OLD BEAT UP DODGE CHARGER, I BELIEVE.

Q. WAS IT A MARKED POLICE VEHICLE?

A. NO, IT WASN'T.

Q. DID YOU HAVE ANY TYPE OF PARTNER WITH YOU ON THAT DATE?

A. YES.

Q. AND WHO WAS THAT?

A. PATRICIA MULCAHY.

Q. DO YOU KNOW WHAT PATRICIA MULCAHY'S CONNECTION WITH THE BALDWIN PARK POLICE DEPARTMENT WAS AT THAT TIME?

A. RESERVE POLICE OFFICER.

Q. DO YOU KNOW WHAT HER CONNECTION WITH THE BALDWIN PARK POLICE DEPARTMENT IS NOW?

A. SHE'S NO LONGER EMPLOYED.

Q. DO YOU KNOW WHEN IT WAS SHE SEPARATED EMPLOYMENT WITH THE BALDWIN PARK PARK [sic] POLICE DEPARTMENT?

A. THE EXACT DATE, NO.

Q. DO YOU KNOW WHERE SHE IS NOW?

A. NO, I DON'T.

Q. AT ANY RATE, OFFICER, AT SOMETIME ON THAT DATE WERE YOU REQUESTED TO CONTACT A MR. STANSBURY?

[2032] A. YES, I WAS.

Q. AND WHAT WERE YOUR INSTRUCTIONS WITH REGARDS TO MAKING THAT CONTACT?

A. WE WERE GIVEN AN ADDRESS BY SERGEANT JOHNSTON. IT WAS A TRAILER PARK ON MISSION, AND A BRIEF DESCRIPTION OF MR. STANSBURY. AND WE WERE DIRECTED TO RESPOND TO THE ADDRESS AND CONTACT MR. STANSBURY.

Q. ALL RIGHT. WERE YOU TO ASK MR. STANSBURY ANY QUESTIONS, OR WHAT WAS THE PURPOSE OF MAKING CONTACT WITH MR. STANSBURY?

A. THE PURPOSE WAS TO ASK MR. STANSBURY TO ACCOMPANY US TO THE POMONA POLICE DEPARTMENT AS A POSSIBLE WITNESS TO A HOMICIDE, AND THAT IS IT.

Q. WERE YOU AT ANY TIME INFORMED THAT HE WAS A SUSPECT IN THIS CASE?

A. NO.

Q. HAD YOU BEEN GIVEN ANY INFORMATION TO BELIEVE OR TO INFER THAT HE MIGHT BE A SUSPECT IN THIS CASE?

A. NO.

Q. WERE YOU TOLD AT ANY TIME TO ARREST HIM IF HE REFUSED TO GO WITH YOU?

A. NO.

Q. NOW, AT THE TIME THAT YOU WERE DIRECTED TO GO TO THIS LOCATION, HAD YOU BEEN TO SOMEWHERE ELSE IN POMONA WITH THE HOMICIDE OFFICERS?

A. YES.

[2033] Q. AND HAD THEY CONTACTED ANOTHER ICE CREAM TRUCK DRIVER AT THAT LOCATION?

A. YES.

Q. DO YOU RECALL WHAT HIS NAME WAS?

A. NO, I DON'T. WE WERE THE ONES THAT FOUND HIM.

Q. LET ME ASK YOU, WHO WAS AT THAT OTHER LOCATION, THAT FIRST LOCATION IN POMONA?

A. IT WAS MYSELF, RESERVE OFFICER MULCAHY, RESERVE OFFICER CATHY GRAY AND SERGEANT HIGGENBOTHAM

Q. AND?

A. AND THE HOMICIDE INVESTIGATORS.

Q. AND WAS DARLENE BELL FROM YOUR DEPARTMENT?

A. DETECTIVE BELL WAS THERE ALSO.

Q. YOU MENTIONED RESERVE OFFICER GRAY AND DANNY HIGGENBOTHAM, WERE THEY IN A SEPARATE UNIT?

A. YES, THEY WERE.

Q. AND THE UNIT WITH THE SHERIFF'S HOMICIDE OFFICERS AND DARLENE BELL, WAS THAT THE THIRD UNIT?

A. YES.

Q. ORIGINALLY AT SOME POINT IN POMONA YOU CONTACTED ANOTHER ICE CREAM DRIVER, AND THERE WERE THREE UNITS AT THAT POINT IN CONTACT. IS THAT RIGHT?

A. YES.

Q. NOW HOW MANY UNITS WENT OVER TO WHERE MR. STANSBURY WAS?

A. TWO.

[2034] Q. WHICH TWO UNITS WERE THOSE?

A. MYSELF AND MY PARTNER AND SERGEANT HIGGENBOTHAM AND HIS PARTNER.

Q. WHO WAS?

A. OFFICER GRAY AND MULCAHY.

Q. NOW, WHAT HAPPENED, IF YOU KNOW, TO THE SHERIFF'S OFFICERS AND DETECTIVE BELL?

A. I BELIEVE THEY RETURNED TO THE POMONA POLICE DEPARTMENT.

Q. DID THEY HAVE THIS OTHER PERSON WITH THEM THAT WAS FIRST CONTACTED.

A. I BELIEVE SO, YES.

[2035] Q. NOW, WHEN YOU WENT TO PICK UP MR. STANSBURY, HAD YOU BEEN INFORMED OF ANY CRIMINAL RECORD OR BACKGROUND OF HIS?

A. NO.

Q. HAD NO INFORMATION CONCERNING THAT?

A. NONE.

Q. WHEN YOU WENT TO THAT LOCATION, WHO MADE CONTACT WITH THE PEOPLE THERE?

A. I DID.

Q. HOW WAS THAT ACCOMPLISHED?

A. I KNOCKED ON THE TRAILER DOOR WHICH FACES SOUTH.

Q. WAS ANYONE ELSE WITH YOU AT THE FRONT DOOR?

A. SERGEANT HIGGENBOTHAM WAS STANDING TO THE REAR AND I BELIEVE MULCAHY OR IT MIGHT HAVE BEEN GRAY.

Q. WHEN YOU KNOCKED AT THE DOOR, DID SOMEONE RESPOND?

A. YES.

Q. AND WHO RESPONDED?

A. MR. STANSBURY.

Q. AND WHAT DID YOU SAY TO HIM?

A. I IDENTIFIED MYSELF BY SHOWING HIM MY BADGE AND ID AND TOLD HIM MY PURPOSE THERE -

Q. TELL US.

A. - WAS TO CONTACT MR. STANSBURY, OF WHICH I HAD A BRIEF DESCRIPTION OF HIM. THAT BEING A MALE WHITE OVER SIX FEET TALL, RED HAIR AND A FULL BEARD, AND I ASKED HIM FOR [2036] IDENTIFICATION.

Q. WHEN YOU FIRST TALKED TO HIM, DID YOU INDICATE WHAT IT WAS YOU WERE TRYING TO TALK TO HIM ABOUT OR TELL - YOU KNOW TELL US -

A. I ASKED HIM WHAT HIS NAME WAS AND HE TOLD ME.

Q. OKAY.

A. AND I TOLD HIM WHY I WAS THERE, I TOLD HIM I WAS THERE IN REFERENCE TO A HOMICIDE INVESTIGATION, THAT HE WAS A POSSIBLE WITNESS, AND THAT THE HOMICIDE DETECTIVES WERE AT THE POMONA POLICE DEPARTMENT, AND IF HE WOULD ACCOMPANY ME TO THE POMONA POLICE DEPARTMENT.

Q. ALL RIGHT.

A. I ALSO ASKED HIM IF HE HAD TRANSPORTATION OR WE WOULD PROVIDE TRANSPORTATION.

Q. DID YOU OFFER HIM - I TAKE IT THEN YOU OFFERED HIM THE CHANCE TO DRIVE DOWN HIMSELF. IS THAT RIGHT?

A. YES.

Q. AND IF HE INDICATED THAT HE WAS PREPARED TO DRIVE DOWN HIMSELF, WOULD YOU HAVE LET HIM DO THAT?

A. YES.

Q. WHAT DID HE INDICATE TO YOU CONCERNING THIS REQUEST TO TALK TO THE OFFICERS?

A. HE AGREED. HE SAYS - I DON'T REALLY REMEMBER WHAT HE SAID. BUT HE HAD NO OBJECTION. AND HE TOLD ME THAT HE DID NOT HAVE TRANSPORTATION TO THE POLICE DEPARTMENT.

Q. YOU DON'T REMEMBER THE EXACT WORDS, BUT [2037] BASICALLY HE INDICATED HE AGREED WITH THAT AND MADE A COMMENT TO YOU THAT HE DIDN'T HAVE ANY TRANSPORTATION?

A. YES.

Q. AT THAT TIME, DID YOU OFFER HIM A RIDE WITH THE CARS THAT YOU HAD?

A. YES.

Q. ALL RIGHT. DID YOU IN FACT TRANSPORT HIM IN ONE OF THE TWO UNITS?

A. IN MINE.

Q. IN YOUR CAR?

A. YES.

Q. AND WHO DROVE THE CAR?

A. I DID.

Q. AND WHERE WAS MR. STANSBURY SEATED WHEN HE WAS TAKEN IN?

A. IN THE FRONT PASSENGER SEAT.

Q. HE WAS NOT PUT IN THE BACK SEAT?

A. NO.

Q. IN THE FRONT PASSENGER SEAT?

A. YES.

Q. WAS THERE ANYONE ELSE IN THE CAR?

A. RESERVE OFFICER MULCAHY.

Q. WHERE DID SHE SIT?

A. IN THE BACK.

Q. NOW, AT ANYTIME, DID MR. STANSBURY INDICATE THAT HE DIDN'T WISH TO COME DOWN TO THE POLICE STATION?

A. NO.

[2038] Q. DID HE EVER INDICATE AT SOME POINT IN TIME HE WANTED TO WAIT AND PERHAPS TALK TO THE OFFICERS IN THE MORNING OR SOME LATER TIME.

A. NO.

Q. APPROXIMATELY HOW FAR WAS IT FROM HIS - THIS RESIDENCE TO THE POLICE POLICE STATION?

A. I WOULD ESTIMATE ABOUT A QUARTER OF A MILE.

Q. AND DURING THE TIME THAT YOU WERE DRIVING TO THE POLICE STATION, DID YOU TALK TO MR. STANSBURY?

A. YES.

Q. WHAT DID YOU TALK ABOUT?

A. I ASKED HIM WHERE HE WORKED.

Q. WHAT DID HE SAY?

A. HE SAID HE DROVE AN ICE CREAM TRUCK AND I ASKED HIM WHERE ABOUT AND HE SAID IN THE AREA OF BALDWIN PARK.

Q. DID HE MAKE ANY OTHER STATEMENTS TO YOU?

A. NO.

Q. DID YOU ASK HIM ANY OTHER QUESTIONS?

A. NO.

Q. DID YOU ASK HIM ANYTHING CONCERNING THE ALLEGED CRIME OR THE CHARGES IN THIS CASE?

A. NO.

Q. DID YOU ASK HIM ANYTHING CONCERNING HIS CONNECTION IN THAT REGARD?

A. NO.

Q. WHEN YOU GOT TO THE BALDWIN PARK POLICE STATION - STRIKE THAT. [2039] WHEN YOU

GOT TO THE POMORA POLICE STATION WHERE DID YOU TAKE HIM?

A. IN THE SALLY PORT AREA.

Q. WHERE DID HE GO FROM THERE?

A. WE WENT INTO THE SALLY PORT THROUGH A HALLWAY AND INTO AN INTERVIEW ROOM.

Q. WAS THIS AN INTERVIEW ROOM BARRED OR ANYTHING OF THAT NATURE?

A. NO.

Q. WAS IT A CELL?

A. NO.

Q. WAS HE PHOTOGRAPHED OR FINGER-PRINTED OR ANYTHING OF THAT NATURE BY THE POMONA POLICE DEPARTMENT?

A. NO.

Q. NO BOOKING PROCEDURE STARTED, ANYTHING LIKE THAT?

A. NO.

Q. WHAT HAPPENED WHEN HE WAS TAKEN INTO THIS ROOM?

A. I WENT UPSTAIRS AND CONTACTED SERGEANT JOHNSTON AND TOLD HIM MR. STANSBURY WAS DOWNSTAIRS.

Q. WERE YOU AT ANYTIME PRESENT DURING ANY QUESTIONING BY ANY OFFICERS OF MR. STANSBURY CONCERNING THIS CASE?

A. NO.

Q. NOW, WHEN YOU WENT TO PICK UP MR. STANSBURY, YOU INDICATED THAT THERE WERE SHERIFF HOMICIDE OFFICERS WHO WERE IN CHARGE OF THE INVESTIGATIONS PRESENT WITH YOU [2040] IN ANOTHER LOCATION. IS THAT RIGHT?

A. YES.

Q. AND THEY WENT TO THE POMONA POLICE STATION WITH A DIFFERENT CIVILIAN AND THEN ASKED YOU TO GO CONTACT MR. STANSBURY. IS THAT RIGHT?

A. YES.

Q. NONE OF THEM WENT WITH YOU TO CONTACT MR. STANSBURY?

A. NO.

Q. NONE OF YOU WERE AT THE LOCATION WHEN YOU MADE CONTACT WITH MR. STANSBURY?

A. NONE OF HOMICIDE WAS, NO.

Q. AT NO TIME WERE YOU GIVEN ANYTHING, ANY REASON TO SUSPECT THAT THIS WAS A SUSPECT OR THAT IF THIS PERSON REFUSED TO GO WITH YOU YOU SHOULD ARREST HIM OR RESTRAIN HIM IN ANY WAY?

MR. DAUGHERTY: OBJECTION, LEADING THE WITNESS.

THE COURT: SUSTAINED.

BY MR. BURNS:

Q. WERE YOU GIVEN ANY INSTRUCTIONS TO RESTRAIN MR. STANSBURY AT ALL SHOULD HE REFUSE TO GO WITH YOU?

A. NO.

Q. WOULD YOU HAVE RESTRAINED MR. STANSBURY IF HE INDICATED HE DIDN'T WISH TO GO WITH YOU?

MR. DAUGHERTY: OBJECTION. IMMATERIAL.

MR. BURNS: I'LL WITHDRAW THE QUESTION.

[2041] THE COURT: YOU MAY.

MR. BURNS: I HAVE NO FURTHER QUESTIONS.

THE COURT: MR. DAUGHERTY?

MR. DAUGHERTY: YES.

CROSS-EXAMINATION +

BY MR. DAUGHERTY:

Q. OFFICER LEE, THE DATE WAS SEPTEMBER 29, 1982 AND THIS WAS ABOUT LL [sic] O'CLOCK AT NIGHT WHEN YOU ACTUALLY WENT TO MR. STANSBURY'S RESIDENCE?

A. YES.

Q. WHEN WAS THE - IN REFERENCE TO THAT TIME, LL [sic] O'CLOCK THAT NIGHT, WHAT WAS

THE TIME WHEN YOU FIRST RECEIVED INFORMATION REGARDING THIS CASE?

A. MY UNIT JOINED THE CASE ABOUT I THINK IT WAS SIX OR SEVEN THAT NIGHT.

Q. IS THAT THE FIRST TIME THAT YOU HAD HEARD ANYTHING ABOUT IT?

A. I HEARD ABOUT THE CASE, BUT WE HAD NOT BE [sic] ASKED TO ASSIST.

Q. ALL RIGHT.

WHEN YOU SAY YOU HEARD ABOUT THE CASE, HAD YOU RECEIVED ANY INFORMATION FROM ANY OF THE PEOPLE WHO WERE WORKING ON THE CASE?

A. NO.

Q. HOW DID YOU GET INVOLVED AT SIX OR SEVEN AT NIGHT, WHAT HAPPENED TO GET YOU INVOLVED IN THIS CASE?

A. WE WERE AN UNDER COVER UNIT, AND WE DIDN'T [2042] LOOK LIKE POLICE OFFICERS. WE DIDN'T KNOW WHAT KIND OF AREA WE WERE GOING INTO AND DIDN'T REALLY KNOW WHAT HOMICIDE WANTED US TO DO.

WE WANTED TO TRY AND BLEND INTO THE AREA, PLUS ANY WAY WE COULD ASSIST. ONE OF OUR INVESTIGATORS WAS INVOLVED IN IT, THE PERSON ATTACHED TO OUR UNIT.

Q. AT SIX OR SEVEN WERE YOU ASKED TO DO SOMETHING SPECIFICALLY REGARDING HOMICIDE?

A. YES, TO GO TO THE POMONA AREA AND ASSIST HOMICIDE IN LOCATING WITNESSES.

Q. SO YOU WENT AND MET WITH DETECTIVE JOHNSTON?

A. NO, I DIDN'T.

Q. DID YOU MEET WITH SOMEBODY FROM SHERIFF HOMICIDE?

A. NO, I DIDN'T.

Q. OKAY.

HOW DID YOU RECEIVE INFORMATION OR DIRECTION AS TO WHAT TO DO IN THIS CASE?

A. FROM OUR TEAM LEADER SERGEANT HIGGENBOTHAM.

Q. HIGGENBOTHAM?

A. YES.

Q. SO YOU HAD ABSOLUTELY NO CONVERSATION WITH DETECTIVE JOHNSTON?

A. OTHER THAN GETTING HIM, NO. MR. STANSBURY WAS AT THE POMONA POLICE DEPARTMENT.

Q. NOW, YOU INDICATED THAT NO ONE HAD INFORMED YOU THAT MR. STANSBURY WAS A SUSPECT IN THIS CASE?

A. NO, NOT ME.

[2043] Q. YOU ALSO WENT TO 812 DUDLEY STREET IN POMONA TO TALK TO ANOTHER ICE CREAM TRUCK DRIVER?

A. YES. I BELIEVE THAT WAS THE ADDRESS.

Q. ABOUT WHAT TIME DID YOU GO TO THAT LOCATION?

A. I'M NOT SURE. IT WAS EARLIER THAN GOING TO MR. STANSBURY'S RESIDENCE.

Q. WAS THAT ALSO IN THE EVENING?

A. YES.

Q. WERE YOU GIVEN ANY INFORMATION FROM SHERIFF INVESTIGATORS REGARDING THAT CONTACT?

A. I WASN'T, NO, DIRECTLY.

Q. SO THE ONLY THING YOU HEARD WAS FROM SERGEANT HIGGENBOTHAM REGARDING THAT ALSO?

A. YES.

WE WERE TO LOCATE A WITNESS, ATTEMPT TO LOCATE.

Q. WAS THAT OTHER PERSON BY THE NAME OF YUSUF NYANGANIRA?

A. I'M NOT SURE ABOUT THE LAST NAME. I KNOW THE FIRST NAME WAS.

Q. YUSUF, Y-U-S-U-F.

AND YOU WERE TOLD THAT YOU WERE TO GO OUT AND CONTACT A WITNESS AT THAT LOCATION?

A. YES.

Q. AND DID YOU GO MAKE THAT CONTACT?

A. YES.

Q. AT 812 DUDLEY STREET, OR DUDLEY AVENUE?

A. IF THAT WAS THE ADDRESS, YES.

[2044] Q. WHO ELSE WAS THERE WHEN YOU ACTUALLY ARRIVED AT DUDLEY AVENUE?

A. MYSELF, RESERVE OFFICER MULCAHY, RESERVE OFFICER GRAY AND SERGEANT HIGGENBOTHAM.

Q. SERGEANT HIGGENBOTHAM IS ALSO FROM -

A. BALDWIN PARK.

Q. SO ALL THE OFFICERS WERE FROM BALDWIN PARK AT THAT LOCATION?

A. AFTER WE CONTACTED HIM?

Q. WHEN YOU ARRIVED AT THE LOCATION TO SEE YUSUF?

A. YES, THE FOUR OF US WERE THERE.

Q. DID SHERIFF INVESTIGATORS OR DEPUTIES ARRIVE AT THAT LOCATION

A. EVENTUALLY, YES.

Q. AT WHAT POINT IN TIME? WHAT WAS HAPPENING WHEN THEY ARRIVED?

A. I BELIEVE IT WAS BEFORE THE CONTACT WAS MADE.

Q. DID YOU WAIT BEFORE EVEN TALKING TO THE WITNESS THERE UNTIL SOMEBODY ARRIVED FROM THE SHERIFF'S DEPARTMENT?

A. I NEVER TALKED TO THEM AT ALL.

Q. DID YOU EVER GO IN THAT -

A. IN THE APARTMENT?

Q. IN THE APARTMENT AND TALK TO YUSUF?

A. I WENT IN, I DIDN'T TALK TO HIM, I DON'T BELIEVE.

Q. PARDON ME?

[2045] A. I DON'T BELIEVE I TALKED TO HIM AT ALL.

Q. AND THIS YUSUF, HE WASN'T A SUSPECT EITHER?

A. NO, NOT THAT I KNOW OF. HE WAS A WITNESS.

Q. PARDON ME?

A. HE WAS A WITNESS AS EXPLAINED TO US.

Q. THE SAME AS MR. STANSBURY?

A. YES.

Q. WHAT HAPPENED WHEN YOU APPROACHED THAT YUSUF'S APARTMENT?

A. I'M NOT REALLY SURE. I THINK WE KNOCKED AND DID NOT GET A RESPONSE. I'M NOT REALLY SURE WHAT HAPPENED.

Q. WELL, AT SOME POINT IN TIME, SOMEBODY OPENED THE DOOR?

A. YES.

Q. IS THAT A WOMAN?

A. I'M NOT SURE, I DON'T REMEMBER.

Q. DO YOU HAVE ANY MEMORY AT ALL OF THAT, THE INCIDENTS THAT OCCURRED THERE?

A. I BELIEVE HE WAS HIDING UNDER A BED.

Q. WERE YOU AT THE FRONT DOOR WHEN THIS WOMAN ANSWERED IT, RESPONDED TO THE DOOR?

A. I COULD HAVE BEEN.

Q. DIDN'T THAT PERSON INDICATE THAT SHE WAS YUSUF'S GIRLFRIEND?

A. I DON'T REMEMBER.

Q. DID THAT PERSON INDICATE THAT - WELL, DIDN'T THAT WOMAN INDICATE TO THE OFFICERS WHO WERE THERE THAT [2046] YUSUF WAS NOT PRESENT IN THE APARTMENT? WAS NOT THERE?

A. COULD HAVE, I'M NOT SURE.

Q. YOU DON'T RECALL THE INCIDENT?

A. NO.

I THINK I DO REMEMBER THAT HE WAS HIDING UNDER A BED OR BEHIND A BED.

Q. HOW DID YOU FIND THAT OUT?

A. BY SEARCHING THE APARTMENT.

Q. DID - HOW DID YOU GO ABOUT ENTERING THAT APARTMENT? HOW DID YOU KNOW HE WAS THERE HIDING UNDER THE BED?

A. I DON'T KNOW.

Q. IF THE LADY SAID THAT HE WASN'T THERE, WHY DID ANYBODY ENTER THAT APARTMENT?

MR. BURNS: OBJECTION, YOUR HONOR. SPECULATION, BEYOND THE SCOPE OF THIS WITNESS' KNOWLEDGE. HE'S INDICATED HE DOES NOT KNOW.

MR. DAUGHERTY: DOES NOT KNOW WHAT?

THE COURT: SUSTAINED.

BY MR. DAUGHERTY:

Q. DID YOU PHYSICALLY ENTER INTO THAT APARTMENT?

A. I BELIEVE I DID, YES.

Q. WERE YOU PRESENT FOR THE CONVERSATION THAT TOOK PLACE AT THE FRONT DOOR BEFORE ENTERING?

A. I MIGHT HAVE BEEN, BUT I DON'T REMEMBER THE CONVERSATION.

Q. DO YOU REMEMBER ANY OF THE CIRCUMSTANCES SURROUNDING THE ENTRY OF THAT LOCATION?

[2047] A. NO, I DON'T.

Q. YOU SAID THAT YOU FOUND THIS ICE CREAM TRUCK DRIVER HIDING UNDER A BED?

A. I DIDN'T SAY I FOUND HIM. I SAID I BELIEVE HE WAS.

Q. DID YOU EVER SEE HIM DOING THAT?

A. I THINK I ENTERED THE ROOM WHEN HE WAS LOCATED.

Q. DID YOU SEARCH THE APARTMENT THERE?

A. DID I?

Q. DID YOU OR ANY OTHER OFFICERS IN YOUR PRESENCE?

A. AS FAR AS LOOKING FOR THE SUSPECT OR WITNESS?

Q. YES.

DID YOU SEARCH LOOKING FOR HIM?

A. I BELIEVE WE LOOKED PHYSICALLY IN EACH ROOM.

Q. AND YOU FOUND THAT PERSON?

A. SOMEONE FOUND HIM.

Q. AND THIS WAS AFTER SHERIFF HOMICIDE INVESTIGATORS ARRIVED AT THE LOCATION?

A. I BELIEVE SO.

Q. DO YOU RECALL HOW MANY?

A. I BELIEVE THERE WAS - I DON'T RECALL. I JUST REMEMBER SERGEANT JOHNSTON.

Q. AND THEN THIS YUSUF WAS TRANSPORTED TO THE POMONA POLICE DEPARTMENT ALSO?

A. YES.

Q. AT THAT POINT IN TIME THEN YOU WERE DIRECTED [2048] TO GO TO THIS LOCATION WHERE YOU EVENTUALLY FOUND MR. STANSBURY?

A. RIGHT.

Q. WERE YOU GIVEN ANY INSTRUCTIONS AT THAT TIME BY ANY OTHER INVESTIGATORS?

A. NO.

Q. YOU WERE GIVEN A DESCRIPTION OF HIM. IS THAT RIGHT?

A. A BRIEF DESCRIPTION.

Q. WERE YOU GIVEN ANY INFORMATION REGARDING THE CRIME THAT HAD BEEN COMMITTED?

A. REGARDING THE CRIME THAT HAD BEEN COMMITTED?

Q. YES?

A. I KNEW THE CRIME THAT HAD BEEN COMMITTED.

Q. DID YOU KNOW THE DETAILS OF THAT CRIME?

A. NO, I DIDN'T.

Q. NOW, DID TWO SEPARATE POLICE UNITS LEAVE FROM YUSUF'S RESIDENCE OR APARTMENT AND GO OVER TO MR. STANSBURY'S LOCATION?

A. YES.

Q. THERE WERE FOUR OFFICERS INVOLVED?

A. YES.

Q. WERE YOU SPECIFICALLY INSTRUCTED TO HAVE TWO SEPARATE UNITS AND FOUR OFFICERS GO OVER THERE?

A. NO.

Q. DID YOU MAKE THE DECISION TO HAVE THE TWO UNITS GO OVER THERE?

A. I WASN'T IN CHARGE OF THE TEAM.

[2049] Q. WERE YOU ARMED AT THE TIME?

A. YES.

Q. WERE THE OTHER - TO YOUR KNOWLEDGE WERE THE OTHER THREE OFFICERS ALSO ARMED?

A. YES, THEY WERE.

Q. WHEN YOU ARRIVED AT THE TRAILER WHERE MR. STANSBURY WAS, YOU INDICATED THAT YOU APPROACHED THE FRONT DOOR AND KNOCKED ON IT?

A. YES, I DID.

Q. WHERE WERE THE OTHER THREE OFFICERS AT THAT TIME AT THE KNOCK?

A. I BELIEVE ONE WAS STATIONED BEHIND ME AND THE OFFICER TWO WERE AT THE END OF THE TRAILER.

Q. COULD YOU PERHAPS ON THAT DIAGRAM - THERE'S A PIECE OF PAPER ON THE BOARD THERE.

COULD YOU SHOW US WHERE THE TRAILER WAS LOCATED AND WHERE EACH OF THE FOUR OF YOU WAS LOCATED AT THE TIME YOU KNOCKED ON THE DOOR WHEN YOU WERE ON THE FRONT PORCH?

A. I CAN SHOW YOU WHERE I THINK THE OFFICERS WERE.

Q. THAT'S FINE.

A. I'M NOT SURE WHO WAS WHERE.

Q. YOUR BEST RECOLLECTION OF THE LOCATION OF THE OFFICERS AT THE TIME WHEN YOU WERE AT THE FRONT PORCH KNOCKING ON THE FRONT DOOR.

(WITNESS DRAWS DIAGRAM).

A. THE DOOR WAS HERE, I WAS THERE. I BELIEVE [2050] ONE OFFICER WAS HERE AND ONE WAS HERE AND ONE WAS BEHIND ME, I THINK THAT'S HOW IT WAS.

Q. WHERE WERE THE TWO POLICE UNITS, AUTOMOBILES?

A. PARKED IN - THE DRIVEWAY COMES LIKE THIS. AND WE WERE PARKED RIGHT HERE.

Q. AND YOU, I BELIEVE, HAVE DRAWN A LARGE RECTANGULAR -

A. THAT WAS TO RESEMBLE THE TRAILER.

Q. YOU'VE ALSO MADE FOUR ROUND CIRCLES IN - AROUND THE TRAILER, THOSE ARE INTENDED TO BE THE FOUR OFFICERS?

A. YES.

Q. ONE OF THE CIRCLES HAS AN "X" IN THE MIDDLE OF IT AND THAT WOULD DEPICT YOU?

A. YES.

Q. OKAY.

YOU CAN BE SEATED.

DO YOU RECALL AT ALL THE OTHER THREE PERSONS WHERE THEY WERE LOCATED? WHICH WAS LOCATED IN WHICH LOCATION?

A. NO, I DON'T.

Q. WAS SERGEANT HIGGENBOTHAM, THE ONE WHO WAS IN CHARGE OF THIS SITUATION?

A. YES.

Q. DO YOU REMEMBER WHERE HE WAS?

A. NO, I DON'T.

Q. YOU'RE THE ONE WHO WENT UP TO THE FRONT DOOR TO CONTACT MR. STANSBURY?

[2051] A. YES.

Q. WERE YOU GIVEN ANY INSTRUCTIONS AS TO WHAT TO SAY TO MR. STANSBURY OR WHAT TO DO?

A. I WAS TOLD - WELL, THE INSTRUCTION WAS TO ASK HIM IF HE WOULD ACCOMPANY ME TO THE POMONA POLICE DEPARTMENT.

Q. WERE THOSE FROM SERGEANT HIGGENBOTHAM?

A. YES.

Q. WAS THERE ANY SPECIAL REASON WHY THE FOUR OFFICERS WERE ALL LAID OUT THE WAY THEY ARE THERE WITH TWO TO EACH SIDE OF THE TRAILER AND ONE BEHIND YOU?

A. THE ONLY REASON IS THAT WE HAD NOT - WE HAVE NEVER BEEN IN THAT AREA BEFORE. WE DID NOT KNOW WHAT KIND OF AREA IT WAS OR WHAT WE WERE GOING TO MEET AT THE FRONT DOOR.

Q. ANYONE HAVE THEIR FIREARMS DRAWN AT ANY POINT IN TIME?

A. I BELIEVE THEY ALL DID.

Q. ALL RIGHT.

THEN MR. STANSBURY ANSWERED THE FRONT DOOR OF THE TRAILER?

A. YES.

Q. AND YOU HAD A CONVERSATION.

DID ANY OF THESE PERSONS DO ANYTHING OTHER THAN REMAIN IN THE LOCATION WHERE THEY WERE, THE OTHER OFFICERS?

A. NOT THAT I BELIEVE.

Q. DID YOU ALSO HAVE YOUR FIREARM DRAWN TOO?

[2052] A. YES.

Q. NOW, DID YOU SAY TO MR. STANSBURY WHEN YOU FIRST APPROACHED HIM OR FIRST HAD A CONVERSATION AT THE DOOR?

A. I IDENTIFIED MYSELF AND ASKED HIM WHAT HIS NAME WAS.

Q. AND HE TOLD YOU WHAT HIS NAME WAS?

A. YES.

Q. THEN WHAT DID YOU SAY TO HIM ABOUT GOING TO THE POLICE STATION OR ABOUT A HOMICIDE INVESTIGATION?

A. I TOLD HIM I WAS THERE TO CONTACT A MR. STANSBURY IN REGARDS TO A HOMICIDE THAT HE WAS A POSSIBLE WITNESS TO.

Q. AND THEN DID YOU - HOW DID YOU ASK HIM TO COME TO THE STATION?

A. I ASKED HIM IF HE WOULD ACCOMPANY ME TO THE POMONA POLICE DEPARTMENT, AND IF HE DIDN'T HAVE TRANSPORTATION, I WOULD PROVIDE IT FOR HIM.

Q. AND THEN WHAT DID HE RESPOND TO THAT?

A. HE WAS VERY COOPERATIVE, HE SAID HE DIDN'T HAVE TRANSPORTATION.

Q. AND THEN YOU INDICATED YOU WOULD DRIVE HIM DOWN IN YOUR UNIT?

A. YES.

Q. AT ANY POINT IN TIME, WAS THERE A POINT IN TIME WHEN YOU OR THE OTHER OFFICERS HOLSTERED YOUR FIREARMS?

A. YES, I DID. I BELIEVE THE OTHER OFFICERS [2053] DID, TOO. MR. STANSBURY WAS VERY COOPERATIVE.

Q. WHEN DID THAT TAKE PLACE?

A. WHEN HE WAS OUTSIDE THE TRAILER.

Q. DID HE IMMEDIATELY COME OUTSIDE THE TRAILER WHEN YOU WERE FIRST TALKING TO HIM OR DID HE GO BACK INSIDE AND CHANGE OR DO ANY PERSONAL THINGS AT ALL, IF YOU RECALL?

A. I DON'T RECALL.

Q. SO THEN YOU GOT IN THE CAR WITH HIM, THE UNIT WITH HIM.

DID THE OTHER UNIT FOLLOW YOU, THE OTHER POLICE UNIT?

A. YES.

Q. WHEN YOU WERE COMING BACK, YOU INDICATED THAT YOU HAD A BRIEF - IT WAS ONLY A QUARTER OF A MILE OR SO BUT A BRIEF CONVERSATION WITH MR. STANSBURY?

A. YES.

Q. AND YOU WERE SEATED IN THE -

A. DRIVER'S SEAT.

Q. AND HE WAS SEATED IN THE RIGHT FRONT SEAT?

A. YES.

Q. AND YOU ASKED HIM WHAT HIS OCCUPATION WAS?

A. YES, WHAT DID HE DO FOR A LIVING.

Q. AND WAS THERE ANY REASON FOR THAT PARTICULARLY?

A. NO.

Q. JUST MAKING POLITE CONVERSATION?

A. YES.

[2054] Q. DID HE INDICATE TO YOU THAT HE WAS AN ICE CREAM TRUCK DRIVER?

A. YES.

Q. AND DID YOU THEN ASK HIM WHERE HE WORKED?

A. YES.

Q. WHAT WAS THE PURPOSE IN ASKING HIM THAT?

A. CONVERSATION.

Q. AT THAT POINT IN TIME, WERE YOU AT ALL CONCERNED WITH GETTING INFORMATION AS TO

WHETHER HE WAS DRIVING AN ICE CREAM TRUCK IN BALDWIN PARK?

A. NO.

Q. AT THAT POINT THE TIME, DURING THAT RIDE BACK TO POMONA POLICE STATION, WAS THERE ANY POINT IN TIME WHEN YOU WANTED TO GET ANY INFORMATION FROM HIM TO SEE IF HE MIGHT BE A SUSPECT IN THIS CASE?

A. NO.

Q. DID YOU ASK MR. STANSBURY WHEN WAS THE LAST TIME YOU WORKED IN BALDWIN PARK?

A. I MIGHT HAVE. I'M NOT SURE WHAT THE CONVERSATION WAS, I KNOW I ASKED HIM WHAT HE DID AND WHERE HE WORKED, IT'S A POSSIBILITY I DID ASK HIM WHEN WAS THE LAST TIME HE WAS IN BALDWIN PARK.

Q. DO YOU REMEMBER ASKING HIM ANYTHING ABOUT THAT AT ALL?

A. NO, I DON'T.

Q. DID YOU EVER PREPARE A POLICE REPORT?

A. I BELIEVE I DID.

Q. WOULD IT REFRESH YOUR MEMORY TO SEE THAT [2055] POLICE REPORT?

A. SURE.

Q. HAVE YOU HAD ANY CHANCE TO REVIEW THAT AT ALL TODAY OR IN THE LAST FEW DAYS?

A. BRIEFLY, TWO WEEKS AGO.

MR. DAUGHERTY: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES, YOU MAY.

BY MR. DAUGHERTY:

Q. OFFICER, SHOWING YOU WHAT APPEARS TO BE A ONE-PAGE DOCUMENT, BALDWIN PARK POLICE DEPARTMENT POLICE REPORT, WITH THE NUMBER 26 IN THE UPPER RIGHT-HAND CORNER, DO YOU RECOGNIZE THAT DOCUMENT AS BEING A POLICE REPORT YOU PREPARED?

A. YES.

Q. IF YOU'D LIKE TO READ THAT TO REFRESH YOUR MEMORY AT ALL -

DEFENDANT STANSBURY: YOUR HONOR, WHILE THE WITNESS IS READING THAT PARTICULAR REPORT, I WOULD LIKE TO SPECIFY THAT I DID NOT HEAR THE WITNESS' ANSWER IN RELATION TO THE QUESTION IF HE HAD HAD AN OPPORTUNITY TO REVIEW THAT PARTICULAR REPORT PRIOR TO TESTIFYING.

THE COURT: YOU WANT TO READ THAT ANSWER BACK.

(THE RECORD WAS READ BY THE REPORTER.)

DEFENDANT STANSBURY: THANK YOU.

BY MR. DAUGHERTY:

Q. DID YOU IN FACT ASK MR. STANSBURY WHEN HE WAS LAST WORKING IN BALDWIN PARK?

[2056] A. ACCORDING TO THAT REPORT, I DID.

Q. IF YOU RECALL, WHAT WAS THE PURPOSE IN ASKING HIM THAT SPECIFIC QUESTION?

A. CONVERSATION.

Q. AND YOU TOOK HIM TO THE POMONA POLICE DEPARTMENT, HAD YOU TAKEN PERSONS THERE FOR INTERVIEWS BEFORE?

A. NO, THAT WAS MY FIRST TIME.

MR. BURNS: YOUR HONOR, MAY I INTERRUPT THIS JUST FOR ONE MOMENT? I HAVE A SHORT CONFERENCE THAT I NEED.

THE COURT: YES.

MR. BURNS: NOT WITH THIS WITNESS.

(THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

THE COURT: YOU MAY PROCEED.

BY MR. DAUGHERTY:

Q. WHERE EXACTLY DID YOU TAKE MR. STANSBURY AT THE POMONA POLICE DEPARTMENT?

A. TO AN INTERVIEW ROOM.

Q. WHERE IS THAT LOCATED?

A. I BELIEVE IT'S ON THE GROUND FLOOR.

Q. HOW DID YOU ENTER THE POLICE STATION WITH HIM?

A. THROUGH THE SALLY PORT.

Q. DID YOU ASK SOMEONE WHERE TO TAKE HIM? HOW DID YOU KNOW WHERE TO TAKE HIM INSIDE THE STATION?

A. I BELIEVE WE ASKED WHERE TO TAKE HIM.

Q. NOW, THE INTERVIEW ROOM IS LOCATED WHERE WITHIN THE POLICE STATION?

[2057] A. I BELIEVE IT'S ON THE GROUND FLOOR.

Q. DID JUST - WERE YOU ALONE WHEN YOU TOOK MR. STANSBURY TO THAT ROOM?

A. NO, THE FOUR OF US, THE FOUR OFFICERS AND MR. STANSBURY WENT IN.

Q. DID ANYONE FROM POMONA OR THE SHERIFF'S DEPARTMENT, POMONA P.D. OR THE SHERIFF'S DEPARTMENT JOIN YOU AT THAT POINT?

A. I BELIEVE AN OFFICER SHOWED US WHERE THE INTERVIEW ROOM WAS.

Q. THEN YOU USHERED MR. STANSBURY INTO THAT INTERVIEW ROOM?

A. YES.

Q. DID THAT HAVE WINDOWS IN IT OR WAS IT JUST FOUR WALLS?

A. I DON'T KNOW. I NEVER WENT IN THERE.

Q. YOU NEVER WENT INTO THE ROOM WITH MR. STANSBURY?

A. I WENT TO CONTACT SERGEANT JOHNSTON.

Q. DID SOMEONE ELSE STAY WITH MR. STANSBURY AT THAT POINT?

A. YES.

Q. WHO WAS THAT?

A. I BELIEVE THE OTHER THREE OFFICERS.

Q. DID YOU SEE MR. STANSBURY AGAIN?

A. NO.

Q. YOU THEN LEFT AT THAT POINT, AS SOON AS YOU CONTACTED SERGEANT JOHNSTON?

[2058] A. WE STOOD BY UNTIL WE WERE RELEASED.

Q. YOU WERE NEVER IN THAT ROOM, THOUGH, WHEN MR. STANSBURY MADE ANY STATEMENT OR WAS ASKED ANY QUESTIONS?

A. NO, I WASN'T.

Q. YOU HAD INDICATED THAT WHEN YOU WERE AT THE SCENE WHEN YOU WERE TALKING TO MR. STANSBURY, WHEN HE WAS AT THE FRONT DOOR, THAT YOU HAD HAD YOUR FIREARM DRAWN?

A. YES.

Q. CAN YOU TELL ME HOW YOU HAD IT DRAWN?

A. I HAD IT OUT OF MY HOLSTER DOWN MY LEG.

Q. WITH YOUR ARM EXTENDED DOWN TOWARD THE GROUND?

A. YES.

Q. DID YOU NOTICE - YOU INDICATED THE OTHER THREE OFFICERS HAD THEIR FIREARMS DRAWN, DID YOU NOTICE HOW THEY HAD THEIRS DRAWN?

A. NO, I DIDN'T.

Q. DO YOU RECALL WHAT WEAPONS YOU HAD AT THAT TIME?

A. ONLY MINE.

Q. WHAT WERE YOU CARRYING?

A. A .45.

Q. IS THAT STANDARD ISSUE FOR BALDWIN PARK POLICE OFFICERS?

A. YES.

Q. YOU ASSUME THE OTHER THREE OFFICERS ALSO HAD .45'S?

A. YES.

[2059] Q. I PRESUME THEY WERE ALL LOADED?

A. MINE WAS.

MR. DAUGHERTY: I HAVE NOTHING FURTHER.

CROSS-EXAMINATION +

BY MR. BURNS:

Q. OFFICER, DID YOU EVER ENTER THE TRAILER AT THE TIME YOU WERE MAKING CONTACT WITH MR. STANSBURY?

A. NO.

Q. AT THAT POINT IN TIME, HAD YOU BEEN INVOLVED IN INTERVIEWING ANY OF THE OTHER WITNESSES IN THIS CASE?

A. NO.

Q. WERE YOU AWARE OF WHAT THE WITNESSES HAD BEEN INTERVIEWED OR WHAT INVESTIGATIVE LEADS WERE PRESENT AT THAT TIME?

A. NO.

Q. WERE YOU AWARE OF WHY IT WAS HOMICIDE OR HOW IT WAS THAT HOMICIDE BECAME AWARE OF MR. STANSBURY'S PRESENCE AT ALL IN THIS CASE?

A. NO.

Q. THE GUN YOU HAD DRAWN, WAS THAT AT ANY TIME OR ANY FASHION POINTED AT MR. STANSBURY?

A. NO.

Q. DID YOU ATTEMPT TO PUT IT BEHIND YOUR LEG IN A FASHION SO THAT MR. STANSBURY WOULD NOT BE AWARE IN FACT THAT THE GUN WAS DRAWN?

A. YES.

Q. MR. STANSBURY AT ANYTIME VOICE ANY CONCERN TO [2060] YOU OR INDICATE ANY HESITANCY IN COOPERATING WITH YOU AT THAT TIME?

A. NO.

MR. BURNS: NO FURTHER QUESTIONS.

MR. DAUGHERTY: NOTHING FURTHER.

THE COURT: THANK YOU, OFFICER.

YOU MAY STEP DOWN.

MR. BURNS: YOUR HONOR, AT THIS TIME THE PEOPLE WOULD CALL SERGEANT PATTERSON TO THE STAND - I'M SORRY.

LIEUTENANT JOHNSTON TO THE STAND.

YOUR HONOR, MAY THIS WITNESS BE EXCUSED FOR THIS MOTION?

THE COURT: YES.

MR. DAUGHERTY: NO OBJECTION

THE COURT: YOU'RE EXCUSED.

MR. SMITH: SIR, THANK YOU.

THOMAS JOHNSTON, +

A PEOPLE'S WITNESS, HAVING BEEN FIRST DULY SWORN TESTIFES [sic] AS FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE

CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESSES STAND.

STATE YOUR NAME FOR THE RECORD AND SPELL YOUR [2061] LAST NAME.

THE WITNESS: THOMAS JOHNSTON, J-O-H-N-S-T-O-N.

DIRECT EXAMINATION +

BY MR. BURNS:

Q. MR. JOHNSTON, DIRECTING YOUR ATTENTION TO SEPTEMBER 29 OF 1982, WHAT WAS YOUR OCCUPATION AND YOUR ASSIGNMENT ON THAT DAY?

A. I WAS A SERGEANT WITH THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, ASSIGNED TO THE HOMICIDE BUREAU.

Q. IN THAT ASSIGNMENT, WERE YOU INVOLVED IN THE INVESTIGATION OF THE DEATH OF ONE ROBYN JACKSON?

A. YES.

[2062] Q. ON THAT DATE FOR ANY REASON WERE YOU IN THE POMONA AREA?

A. I WAS.

Q. AND WHAT WAS YOUR PURPOSE INITIALLY [sic] IN GOING TO THE POMONA AREA ON THAT DATE?

A. CONTACT AND INTERVIEW TWO INDIVIDUALS BELIEVED TO HAVE BEEN IN THE BALDWIN PARK AREA ON THE PREVIOUS DAY.

Q. PRIOR TO GOING TO THE POMONA AREA, DID YOU REQUEST ANY UNITS TO GO TO THE POMONA AREA IN ADVANCE OF YOU?

A. YES, SIR.

Q. WHAT WAS THE PURPOSE OF SENDING THOSE UNITS IN ADVANCE?

A. TO VERIFY THAT THE ADDRESSES, EACH ONE OF THE TWO ADDRESSES WAS A VALID ADDRESS AND ALSO TO OBSERVE IF THERE WERE ANY VEHICLES AT EITHER ONE OF THE ADDRESSES THAT WERE TURQUOISE IN COLOR.

Q. AT THAT POINT IN TIME HAD YOU INTERVIEWED A WITNESS WHO HAD GIVEN YOU A DESCRIPTION CONCERNING A POSSIBLE VEHICLE USED TO DEPOSIT THE BODY?

A. YES, SIR.

Q. WAS THAT DESCRIPTION IN ANY WAY SIMILAR TO AN ICE CREAM TRUCK?

A. NO, SIR.

Q. WAS IT A PASSENGER VEHICLE?

A. YES, SIR.

Q. AMERICAN LATE MODEL, TURQUOISE IN COLOR?

[2063] A. YES

Q. NOW, AT THAT POINT IN TIME, HOW WAS IT THAT YOU BECAME AWARE OF MR. ROBERT STANSBURY AT ALL IN CONNECTION WITH THIS CASE?

A. INFORMATION FROM A BALDWIN PARK POLICE OFFICER WHOSE NAME I CANNOT RECALL, RELATIVE TO HIS BEING DISPATCHED TO THE SCENE OF A PROPERTY DAMAGE VEHICLE ACCIDENT ON THE PREVIOUS AFTERNOON IN THE BALDWIN PARK AREA.

Q. SO AT THAT POINT IN TIME BASED ON ALL THE WITNESSES THAT YOU HAD INTERVIEWED, THE INFORMATION THAT YOU HAD AT THAT POINT IN TIME CONCERNING MR. STANSBURY WAS JUST THAT HE HAD HAD A TRAFFIC ACCIDENT SOMEWHERE IN THE BALDWIN PARK AREA?

A. A. YES, SIR.

Q. WHY DID YOU WANT TO TALK TO HIM?

A. WELL, THE TIME OF THE ACCIDENT AND THE LOCATION OF THE ACCIDENT WAS SIGNIFICANT TO THE AREA IN TIME RELATIVE TO THE DISAPPEARANCE IN AN ATTEMPT TO FIND ALL POSSIBLE WITNESSES RELATIVE TO THE INCIDENT AS SOON AS POSSIBLE. WHICH WOULD BE THE MAIN REASON.

Q. ALL RIGHT. NOW, DID YOU YOURSELF GO TO MR. STANSBURY'S RESIDENCE FIRST?

A. NO, SIR.

Q. WHICH RESIDENCE DID YOU GO TO?

A. THE RESIDENCE OF A YUSUF WITH THE LONG NAME ON DUDLEY.

Q. NOW AT SOME POINT DID YOU MAKE CONTACT WITH [2064] THAT INDIVIDUAL THAT WE'LL CALL YUSUF?

A. YES, SIR, I DID.

Q. AND DID HE AGREE TO GO WITH YOU TO THE POMONA STATION FOR SOME QUESTIONING?

A. YES.

Q. AND DID YOU ACCOMPANY YUSUF TO THE POMONA POLICE STATION FOR THE PURPOSE OF THOSE QUESTIONS?

A. I DID.

Q. DID ANYONE FROM THE SHERIFF'S HOMICIDE TEAM GO TO MR. STANSBURY'S RESIDENCE?

A. NO.

Q. DID YOU REQUEST SOMEONE GO TO MR. STANSBURY'S RESIDENCE AND MAKE CONTACT WITH HIM?

A. YES.

Q. AND DO YOU RECALL WHO IT WAS THAT YOU MADE THAT REQUEST OF?

A. SERGEANT HIGGENBOTHAM.

Q. WHAT DID YOU INDICATE TO MR. HIGGENBOTHAM THAT YOU WANTED TO HAVE ACCOMPLISHED; WHAT DID YOU TELL HIM TO DO?

Q.[sic] I INDICATED TO SERGEANT HIGGENBOTHAM THAT I WAS GOING TO ATTEMPT TO ACCESS SOME INTERVIEW ROOM AT POMONA POLICE DEPARTMENT AND THAT I WOULD BE THERE FOR A PERIOD OF TIME INTERVIEWING YUSUF.

IF IT WAS AT ALL POSSIBLE, I WOULD APPRECIATE IF MR. STANSBURY WOULD RESPOND TO THE POMONA POLICE DEPARTMENT EITHER BY HIS OWN MEANS OR AT THE ASSISTANCE OF BALDWIN PARK TO ADVISE THAT WE DESIRE TO TALK TO HIM.

[2065] AND IF NECESSARY, WE WOULD PROVIDE TRANSPORTATION, AND WE WOULD MAKE IT AS BRIEF A PERIOD OF TIME AS POSSIBLE.

Q. YOU BASICALLY INDICATED TO MR. HIGGENBOTHAM THAT MR. STANSBURY WOULD BE OR SHOULD BE ALLOWED TO MAKE HIS OWN TRANSPORTATION ARRANGEMENTS IF HE DESIRES.

IS THAT RIGHT?

A. YES.

Q. INDICATING THAT THAT WAS AN OFFER YOU WANTED TO MAKE SURE WAS EXTENDED TO MR. STANSBURY.

MR. DAUGHERTY: OBJECTION. LEADING THE WITNESS.

THE COURT: SUSTAINED.

MR. DAUGHERTY: OVER AND OVER.

BY MR. BURNS:

Q. DID YOU AT ANY TIME COMMUNICATE TO MR. HIGGENBOTHAM THAT MR. STANSBURY WAS A SUSPECT IN THIS CASE?

A. NO.

Q. AT ANY TIME DID YOU MAKE ANY REQUEST FOR HIS DETENTION OR APPREHENSION?

A. NO.

Q. IF IN FACT MR. STANSBURY WERE TO HAVE BEEN A SUSPECT AT THAT POINT IN TIME, WOULD IT HAVE BEEN YOUR NORMAL PROCEDURE TO DISPATCH ASSISTING UNITS TO THE LOCATION WITHOUT YOUR PERSONAL PRESENCE?

A. NO.

Q. HOW LONG HAD YOU BEEN A SHERIFF'S HOMICIDE INVESTIGATOR UP UNTIL THEN?

[2066] A. IN SEPTEMBER OF 1982.

I STARTED IN HOMICIDE MARCH 1978, SO FOUR YEARS, A LITTLE OVER FOUR YEARS.

Q. NOW, AT THAT POINT IN TIME OR - STRIKE THAT. AT SOME LATER POINT IN TIME WERE YOU INFORMED THAT MR. STANSBURY WAS IN FACT AT THE POMONA POLICE STATION?

A. YES.

Q. WHO INFORMED YOU OF THAT?

A. THERE WAS OFFICER LEE AND AN UNKNOWN POMONA POLICE OFFICER.

Q. WHAT DID YOU DO AT THAT POINT?

A. I FOLLOWED THE POMONA OFFICER AND LEE TO WHERE MR. STANSBURY WAS DOWNSTAIRS IN THE POMONA POLICE STATION.

Q. AT THE TIME THAT YOU WERE INFORMED THAT MR. STANSBURY WAS THERE, DO YOU RECALL WHAT YOU WERE DOING AT THAT TIME?

A. WE WERE JUST PROCEEDING WITH THE INTERVIEW OF YUSUF UPSTAIRS IN AN INTERVIEW ROOM OFF OF THEIR DETECTIVE BUREAU.

Q. AND WHEN YOU WENT DOWNSTAIRS, DID YOU TAKE ANYONE WITH YOU?

A. NO.

Q. WHERE DID YOU MEET MR. STANSBURY?

A. IN AN INTERVIEW ROOM IN THE GROUND FLOOR IN THE JAIL AREA OF THE POMONA POLICE DEPARTMENT.

Q. WAS MR. STANSBURY AT ANY TIME RESTRAINED OR [2067] HANDCUFFED?

A. NO, SIR.

Q. AT THAT TIME WHEN YOU MET MR. STANSBURY, DID YOU ASK HIM ANY QUESTIONS?

A. YES, SIR.

Q. WAS ANYBODY PRESENT DURING THE TIME YOU WERE ASKING THESE QUESTIONS?

A. YES.

Q. WHO WAS PRESENT?

A. OFFICER DARLENE BELL FROM BALDWIN PARK POLICE DEPARTMENT.

Q. WHEN DID SHE COME IN DURING THIS QUESTIONING TIME?

A. AT THE BEGINNING.

Q. AND PRIOR TO ASKING MR. STANSBURY ANY QUESTIONS, DID YOU ADVISE HIM OF ANY MIRANDA RIGHTS?

A. NO, SIR.

Q. WAS HE, PRIOR TO THESE QUESTIONS, A SUSPECT IN YOUR MIND?

A. NO, SIR.

Q. WAS HE IN CUSTODY AT THAT TIME?

A. NO, SIR.

Q. IF MR. STANSBURY HAD ASKED TO LEAVE, WHAT WOULD YOU HAVE DONE?

A. PERMITTED HIM TO LEAVE.

Q. DID MR. STANSBURY AT ANY TIME INDICATE TO YOU THAT HE WAS RELUCTANT TO ANSWER YOUR QUESTIONS?

A. NO, SIR.

[2068] Q. DID HE AT ANY TIME REQUEST TO MAKE PHONE CALLS TO ANYONE ELSE?

A. NO.

Q. DID HE AT ANY TIME REQUEST THE QUESTIONING TO STOP PRIOR TO ACTUALLY LATER GIVING HIM SOME MIRANDA RIGHTS?

A. PRIOR TO MIRANDA RIGHTS?

Q. YES.

A. NO, SIR.

Q. WHAT BASICALLY DID YOU ASK HIM AT THAT POINT?

A. I ASKED HIM OF COURSE HIS NAME AND HIS RESIDENCE, HIS OCCUPATION, AND HIS ACTIONS OF THE PREVIOUS DAY.

Q. AND DID HE RESPOND TO THOSE THINGS?

A. YES, SIR.

Q. DID HE RESPOND TO THEM IN A WILLING MANNER?

A. YES.

Q. DID HE APPEAR TO BE RELUCTANT IN HIS RESPONSES TO YOU?

A. NO.

Q. WHAT SORT OF INFORMATION DID HE TELL YOU?

A. HE GAVE ME INFORMATION CONCERNING THE ICE CREAM TRUCK AND THAT IT BELONGED TO

SOME INDIVIDUAL THAT HE LEASED THE ICE CREAM TRUCK FROM. WHAT HIS ROUTE HAD INVOLVED THE PREVIOUS DAY AS FAR AS THE TIME, THE ROUTE TO BALDWIN PARK, HOW HE WORKED BALDWIN PARK. HOW HE HAD A PROBLEM WITH THE VEHICLE THAT REQUIRED HIM PURCHASING SOME TOOLS TO DO SOME WORK ON, I BELIEVE IT WAS THE TAPPETS.

[2069] HE SAID HE HAD TO REMOVE THE ENGINE COVER TO DO SOME WORK.

HE WAS IN THE VICINITY OF A HIGH SCHOOL, HE COULD NOT RECALL THE NAME OF THE HIGH SCHOOL, BUT IT WAS SOMEWHERE OFF RAMONA.

HE HAD BEEN DELAYED FOR A PERIOD OF TIME AND HAD GONE BACK TO HIS ROUTE SOMEWHERE IN THE NEIGHBORHOOD OF 2 OR 2:30 IN THE AFTERNOON.

HE WOULD QUADRANT THE CITY. HE WAS NOT FAMILIAR WITH ALL THE STREETS.

HOWEVER, HE WOULD REFERENCE AN AREA AS IT RELATED TO MAIN STREET OR RAMONA. OR IN ONE INSTANCE HE WOULD REFERENCE MAIN STREET IN THE NEIGHBORHOOD OF LOS ANGELES STREET.

HE INDICATED THAT HE WAS IN THE AREA THAT WE WERE CONCERNED WITH, SOMEWHERE IN THE NEIGHBORHOOD OF 6:00 P.M.

AND HE REFERRED TO THAT NEIGHBORHOOD BY SAYING IT WAS EAST OF MAIN STREET AND NORTH OF LOS ANGELES STREET.

AND I BELIEVE SINCE I WAS NO MORE FAMILIAR WITH STREET NAMES THAN MR. STANSBURY, I BELIEVE WE BOTH USED THE GETTY SCHOOL AS A REFERENCE POINT.

THAT HE WAS STILL HAVING TROUBLE WITH HIS VEHICLE, AND HE LEFT THE AREA IN THE VEHICLE NORTHBOUND TOWARD ARROW HIGHWAY SOMEWHERE IN THE NEIGHBORHOOD OF 6:30 TO 7.

HE PROCEEDED HOME TO THE POMONA ADDRESS, VIA [2070] ARROW HIGHWAY TO AVOID KELLOG HILL.

THE PERFORMANCE OF HIS VEHICLE WAS SUCH THAT HE WAS UNABLE TO NEGOTIATE THE HILL.

HE STOPPED SOMEWHERE ALONG ARROW HIGHWAY IN AN UNKNOWN LOCATION AS FAR AS A CROSS STREET FOR THE PURPOSES OF PURCHASING GAS.

HE DESCRIBED THE GAS STATION, HE WAS UNABLE TO PROVIDE THE NAME OF THE SERVICE STATION, THE ACTUAL COMPANY.

HE INDICATED HE ARRIVED AT HIS RESIDENCE SHORTLY AFTER 9:00 P.M. BASED ON THE FACT THAT HIS VEHICLE COULD ONLY PROCEED AT AN ESTIMATED 10 TO 15 MILES AN HOUR.

HE FURTHER INDICATED THAT HE FELL ASLEEP WATCHING TELEVISION, AND THAT HE WAS AWOKEN SOMEWHERE AROUND MIDNIGHT BY A ROOMMATE OF HIS BY THE NAME OF LUCAS WHO WAS APPARENTLY WASHING POTS AND PANS OR DISHES IN THE TRAILER THAT HE WAS SLEEPING IN.

HE INDICATED THAT HE ASKED MR. LUCAS IF HE COULD BORROW THE LUCAS VEHICLE IN ORDER TO GO OUT TO A RESTAURANT, SAMBO'S ON INDIAN HILL IN ORDER TO GET SOMETHING TO EAT.

I ASKED HIM WHAT OTHER VEHICLES WOULD BE AVAILABLE TO HIM; WHO ELSE LIVED IN THE RESIDENCE THAT MAY HAVE BEEN HOME AT THAT TIME.

HE SAID THERE WAS NO ONE ELSE OTHER THAN LUCAS. AND HE LIVED WITH TWO OTHER PEOPLE, MR. EASTERDAY AND A MR. GLENN PARKER.

HE DESCRIBED ONE OF THESE PEOPLE AS BEING AN [2071] UNCLE. I DON'T RECALL WHICH ONE.

AND THAT MR. EASTERDAY HAD AN OLDER GRAY PLYMOUTH THAT HE HAD ACCESS TO.

SINCE MR. EASTERDAY WAS NOT THERE, HE WAS GOING TO USE THE LUCAS VEHICLE.

HE INDICATED THAT THE MORNING OF THE 29TH HAD PUT HIS TRUCK IN THE STARBUCK'S TO HAVE THE MOTOR FIXED.

THAT HE BORROWED THE LUCAS VEHICLE, AND HE PROCEEDED ALONE IN THE LUCAS VEHICLE TO THIS SAMBO'S RESTAURANT.

HE WAS UNABLE TO INDICATE WHAT TIME HE GOT BACK TO THE TRAILER AFTER GOING TO SAMBO'S.

Q. DID HE INDICATE TO YOU WHERE THIS SAMBO'S WAS LOCATED?

A. INDIAN HILL.

Q. DURING THE TIME HE WAS GIVING YOU THIS INFORMATION, WERE THESE NARRATIVE TYPE STATEMENTS, ~~OR WERE~~ THESE QUESTION AND ANSWER TYPE STATEMENTS OR SOME COMBINATION?

A. SOME COMBINATION.

Q. ALL RIGHT, NOW HE INDICATED TO YOU THAT HE HAD EARLIER DESCRIBED HIS ROUTE IN BALDWIN PARK. IS THAT RIGHT?

A. YES.

Q. DID HE INDICATE WHAT STREETS HE HAD GOTTEN OFF THE SAN BERNARDINO FREEWAY AS HE WAS ENTERING INTO THE BALDWIN PARK AREA?

A. HE SAID HE USUALLY TAKES PACIFIC OFF.

[2072] HE FELT IT HAD BEEN PACIFIC. HOWEVER, ON SOME OCCASIONS HE HAD USED PUENTE.

HE SEEMED VERY CONCERNED WITH PROVIDING ACCURATE INFORMATION. HE FELT IT WAS PACIFIC.

Q. HE FELT IT WAS PACIFIC, BUT FELT IT MIGHT HAVE BEEN PUENTE?

A. CORRECT.

Q. AT SOMETIME YOU INDICATED HE DESCRIBED A GAS STATION THAT HE HAD BOUGHT SOME GAS. IS THAT RIGHT?

A. YES.

Q. WHAT DID HE TELL YOU ABOUT THE GAS STATION?

A. HE SAID IT WAS RIGHT ON ARROW HIGHWAY, AND THAT IT WAS A SERVICE STATION WHERE YOU DRIVE IN AND PAY IN THE CASH BOOTHS, CASHIERS' BOOTHS.

IT'S RIGHT UP BETWEEN THE PUMPS IN CLOSE PROXIMITY TO THE STREET ITSELF.

Q. DID HE INDICATE TO YOU WHETHER THERE WAS A CORNER OR NOT A CORNER, OR WAS THAT AREA EVEN DISCUSSED?

A. I CANNOT RECALL.

Q. WAS HE ABLE TO GIVE YOU A NAME OF THE GAS STATION?

A. HE WAS ABLE TO INDICATE THAT IT WAS ONE OF THE OFF BRANDS, SOME TYPE OF A DISCOUNT TYPE.

AND I BELIEVE THERE WAS SOME REFERENCE TO A SAV-MOR OR SOMETHING. BUT I DON'T KNOW THE ORIGIN OF THAT PARTICULAR NAME. IT WAS NOT A MAJOR BRAND.

[2073] Q. NOW, AT SOME POINT HE INDICATED THAT HE GOT HOME AND LATER BORROWED A CAR

AND WENT TO SOME PLACE TO GET SOMETHING TO EAT. IS THAT RIGHT?

A. THAT'S CORRECT.

Q. AT THE POINT HE FIRST INDICATED HE BORROWED THIS CAR, HE HAD NOT YET DESCRIBED THIS CAR, HAD HE?

A. THAT'S CORRECT.

Q. AFTER HE MADE THESE STATEMENTS, DID YOU SHOW HIM ANY PICTURES OR ANY DEPICTIONS OF ANY OF THE PEOPLE INVOLVED IN THIS CASE?

A. YES, I SHOWED HIM A PHOTOGRAPH OF ROBYN JACKSON.

Q. WHAT WAS THE PURPOSE OF SHOWING THE PHOTOGRAPH OF ROBYN JACKSON?

A. TO SEE IF HE RECOGNIZED HER OR RECALLED SEEING HER THAT DAY.

Q. TOWARDS WHAT END OR TOWARDS WHAT PURPOSE?

A. TOWARD THE POSSIBILITY OF HIM HAVING SEEN HER COMING FROM OR GOING TO ANY PARTICULAR LOCATION OR PERSONS OR VEHICLES OR WHEREABOUTS AT A TIME THAT MIGHT BE PERTINENT TO THIS INVESTIGATION.

Q. THIS WOULD STILL BE IN THE NATURE OF HIM BEING A POSSIBLE WITNESS TO HER MOVEMENTS THAT WERE THEN UNKNOWN?

A. YES.

MR. DAUGHERTY: OBJECTION. LEADING.

MR. BURNS: I DON'T THINK IT WAS LEADING, YOUR [2074] HONOR.

THE COURT: OVERRULED.

THE ANSWER WILL STAND.

WE'LL TAKE A SHORT RECESS. WE'LL RESUME AT A QUARTER AFTER THREE.

(RECESS.)

THE COURT: WE'RE BACK ON THE RECORD IN THE STANSBURY MATTER.

MR. BURNS, MR. DAUGHERTY AND MR. STANSBURY IS HERE.

MR. ROBUSTO HAS BEEN TEMPORARILY EXCUSED. WE EXPECT HIM IN ABOUT TEN MINUTES.

YOU MAY PROCEED.

MR. BURNS: THANK YOU, YOUR HONOR.

Q. YOU INDICATED, OFFICER, THAT YOU SHOWED MR. STANSBURY A PHOTOGRAPH OF THE VICTIM. IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND I'M NOT SURE IF I ASKED THIS QUESTION. WHAT WAS THE PURPOSE OF SHOWING MR. STANSBURY THAT PHOTOGRAPH?

A. SEE IF HE RECOGNIZED THE YOUNG LADY AND IF HE HAD SEEN HER AROUND THE 28TH.

Q. WHAT OTHER QUESTIONS DID YOU ASK - WHAT DID MR. STANSBURY RESPOND TO THAT QUESTION?

A. HE INDICATED THAT HE HAD SPOKEN TO HER. THAT HE HAD SEEN HER IN PROXIMITY TO WHERE HE BELIEVED SHE LIVED IN COMPANY WITH ANOTHER YOUNG FEMALE AND A SMALLER [2075] BOY.

AND HE FELT THAT THAT WAS AROUND 6:00 P.M. AND IT WOULD BE ON THE STREET ON THE EAST SIDE OF THE SCHOOL, ALTHOUGH HE WAS NOT ABLE TO TELL ME THE NAME OF THE STREETS.

Q. DID HE INDICATE WHAT HAPPENED AFTER VIEWING THE GIRL?

A. AFTER SPEAKING TO HER FOR A SHORT PERIOD OF TIME, HE PROCEEDED DOWN THAT STREET, WHICH WOULD BE PHELAN AND AT THE NEXT INTERSECTION, IT'S A T-INTERSECTION.

THE STREET COMES IN FROM THE WEST, HE SOLD SOME ICE CREAM TO FOUR LITTLE MEXICAN CHILDREN.

HE WASN'T ABLE TO INDICATE WHO THEY WERE OR EVEN HAVING HAD ANYTHING TO DO WITH THEM BEFORE.

IN FACT, I DON'T RECALL IF HE WAS EVEN ABLE TO SPECIFY WHAT THE SEXES OF THE CHILDREN WERE.

HE THEN PROCEEDED WESTBOUND ON THAT STREET I JUST REFERRED TO ALL THE WAY TO MAIN STREET.

AND AGAIN, I'M NOT FAMILIAR ENOUGH WITH THE AREA TO TELL YOU WHAT THE STREET IS.

HE DID DRAW A LITTLE MAP SO WE COULD FOLLOW EACH OTHER.

HE PROCEEDED ON MAIN STREET WHERE HE COULD GO MAIN STREET, COMING BACK EAST FROM MAIN TO THE WEST SIDE OF THE GETTY SCHOOL.

AS HE GOT TO THE END OF THAT STREET AT GETTYS SCHOOL, HE PROCEEDED NORTHBOUND.

Q. DURING THIS TIME, DID HE AT ANY TIME INDICATE [2076] THAT HE HAD STOPPED AND MADE CONTACT WITH ANY OTHER POTENTIAL CUSTOMERS OR MADE ANY OTHER SALES?

A. NO, JUST THE REFERENCE TO THE FOUR MEXICAN CHILDREN AT THE FIRST INTERSECTION.

Q. DID YOU AT THAT TIME ASK HIM ANY QUESTIONS CONCERNING ANY PEOPLE THAT HE MIGHT HAVE SEEN IN THE AREA?

A. YES, I DID.

Q. DID YOU ATTEMPT TO GET A DESCRIPTION OF WHO THESE PEOPLE WERE?

A. YES.

Q. WHAT INFORMATION DID HE GIVE YOU?

A. HE WAS NOT AWARE OF ANYBODY IN THE NEIGHBORHOOD IN THE AREA THAT HE HAD NOT SEEN THERE BEFORE WITH THE EXCEPTION OF ANOTHER ICE CREAM TRUCK WITH A MALE CAUCASIAN DRIVER, WHICH WAS SEEN BY HIM ON THE STREET ON THE WEST SIDE OF GETTYS SCHOOL AFTER LEAVING THE AREA OF HIS ENCOUNTER WITH VICTIM JACKSON.

Q. WHY WERE YOU INQUIRING OF HIM AS TO OTHER PEOPLE HE MIGHT HAVE SEEN IN AND ABOUT THE TIME HE SAW THE VICTIM?

A. IN ORDER TO IDENTIFY ANY WITNESSES AND OR SUSPECTS RELATIVE TO THE DISAPPEARANCE OF THE GIRL.

Q. WHY WERE YOU ASKING HIM SPECIFICALLY WHAT HE HAD DONE AFTER SEEING THE GIRL?

A. FOR THE PURPOSES OF ASCERTAINING HIS MOVEMENTS AS BEST THEY COULD RELATE TO LOCATION AND TIME OF DAY.

Q. AS TO WHEN HE WOULD HAVE SEEN THESE OTHER [2077] PEOPLE?

A. YES.

Q. NOW, AFTER ASKING THESE QUESTIONS, WHAT ELSE DID YOU TALK TO HIM ABOUT OR - STRIKE THAT.

I'M SORRY, I DON'T KNOW IF I ASKED THIS.

DID HE DESCRIBE SOMEONE TO YOU THAT HE HAD SEEN IN THE AREA?

A. YES.

Q. DO YOU RECALL WHAT SORT OF DESCRIPTION HE GAVE YOU?

A. JUST VERY VAGUELY, BUT IT WAS A MALE CAUCASIAN, I BELIEVE - WELL I WOULD BE GUESSING AT THE AGE - DRIVING ANOTHER ICE CREAM TRUCK, A WHITE STEP VAN HE BELIEVED WAS A FORD, AND THAT WAS ON THE STREET I PREVIOUSLY REFERRED TO.

Q. AT THAT TIME, OFFICER, DID YOU ASK HIM ANY QUESTIONS CONCERNING THE OTHER PEOPLE THAT HE LIVED WITH OR WHO THEY WERE AND SO FORTH?

A. YES.

Q. AND DID HE GIVE YOU ANY INDICATION AS TO THE VEHICLES THAT WERE CONNECTED TO THAT HOUSE?

A. YES. HE INDICATED THAT THERE WERE TWO VEHICLES THERE, ONE BELONGING TO MR. EASTERDAY AND THE OTHER VEHICLE BELONGING TO MR. LUCAS.

Q. DID HE DESCRIBE THE EASTERDAY VEHICLE FIRST?

A. YES.

Q. AND DID HE THEN DESCRIBE THE LUCAS VEHICLE?

A. YES.

[2078] Q. WAS THIS THE VEHICLE THAT HE INDICATED THAT HE HAD BORROWED ON APPROXIMATELY MIDNIGHT ON THE DAY BEFORE THE 28TH?

A. YES.

Q. HOW DID HE DESCRIBE THAT VEHICLE?

A. HE TOLD ME THE VEHICLE WAS A LATE MODEL UNKNOWN YEAR BUT OLDER CHEVELLE AND TWO-DOOR, AND THAT IT WAS TURQUOISE IN COLOR.

Q. AT THAT POINT, WHAT QUESTIONS DID YOU ASK HIM?

A. I THINK IT WAS AT THAT POINT THAT I ASKED HIM CONCERNING ANY PRIOR ARRESTS.

Q. UP UNTIL THAT POINT, OFFICER, HAD YOU HAD ANY INFORMATION CONCERNING WHAT MR. STANSBURY'S PRIOR ARREST BACKGROUND WAS?

A. NO.

THE COURT: WOULD YOU READ BACK THE LAST TWO QUESTIONS AND ANSWERS, PLEASE.

(THE RECORD WAS READ BY THE REPORTER.)
BY MR. BURNS:

Q. HAD YOU HAD ANY INFORMATION CONCERNING WHAT HIS PRIOR BACKGROUND WAS?

A. NO.

Q. AND IT WAS AFTER HE DESCRIBED THE CAR THAT HE INDICATED THAT HE BORROWED AT MIDNIGHT ON THE 28TH THAT YOU ASKED HIM CONCERNING HIS RECORD?

A. THAT'S CORRECT.

Q. AND AT APPROXIMATELY WHAT TIME IN THE MORNING [2079] WERE YOU AWARE THAT THE BODY WAS DUMPED?

A. IT WAS 0130 HOURS, 1:30 AM.

Q. AND FROM THAT - AND THAT CAR WAS IDENTIFIED TO YOU, AT LEAST PARTIALLY, AS TURQUOISE COLOR?

A. YES, SIR.

Q. AT THAT TIME DID THE DEFENDANT INDICATE TO YOU WHAT HIS BACKGROUND WAS?

A. YES, HE DID.

Q. DO YOU RECALL BASICALLY WHAT KIND OF BACKGROUND HE INDICATED HE HAD?

A. HE INDICATED TO ME HE WAS PRESENTLY ON PAROLE. THAT HE HAD BEEN CONVICTED EITHER TWO OR THREE TIMES PREVIOUS FOR KIDNAPPING AND RAPE AND TWO PRIOR CONVICTIONS FOR CHILD MOLESTATION.

ONE OF THE KIDNAPPING AND RAPES OCCURRED IN THE STATE OF OKLAHOMA SOMETIME PRIOR TO THAT, AND THAT HE WAS PRESENTLY ON PAROLE FOR KIDNAPPING AND RAPE.

Q. AT THAT POINT IN TIME WHAT DID YOU DO?

A. I TERMINATED ANY FURTHER QUESTIONS.

Q. DID YOU LEAVE THE AREA?

A. AFTER MR. STANSBURY MADE A STATEMENT.

Q. WHAT STATEMENT DID HE MAKE?

A. "I GUESS THAT MAKES ME A GOOD SUSPECT."

Q. IS THAT WHAT HE TOLD YOU AFTER INDICATING TO YOU HIS PRIOR RECORD?

A. YES, SIR.

Q. AND THEN HE MADE THE STATEMENT, "I GUESS THAT MAKES ME A GOOD SUSPECT?"

[2080] A. YES, SIR.

Q. WHAT DID YOU DO AT THAT POINT?

A. I HAD OFFICER BELL LEAVE THE ROOM AND CONTACTED SERGEANT PATTERSON AND DEPUTY RIORDAN.

Q. WHEN YOU INDICATE YOU HAD DETECTIVE BELL LEAVE THE ROOM, DID YOU ALSO LEAVE THE ROOM WITH DETECTIVE BELL?

A. YES.

Q. MR. STANSBURY WAS THEN LEFT ALONE IN THE ROOM AT THAT TIME?

A. YES.

Q. DID YOU CONTACT ANY OTHER OFFICERS AT THAT POINT?

A. THERE WAS SOMEBODY FROM BALDWIN PARK JUST OUTSIDE THE ROOM IN THE HALLWAY, AND I ASKED THEM IF THEY WOULD GET PATTERSON AND RIORDAN.

AND I THINK IT MUST HAVE BEEN SERGEANT HIGGENBOTHAM, BUT I'M NOT SURE.

Q. AND AT SOME SUBSEQUENT POINT DID YOU MAKE CONTACT WITH INVESTIGATORS THAT YOU DESCRIBED AS PATTERSON AND RIORDAN?

A. YES.

Q. WHO ARE THEY?

A. THEY WERE MY CO-INVESTIGATORS ON THIS HOMICIDE.

Q. WORKING FOR SHERIFF'S HOMICIDE?

A. THAT'S CORRECT.

Q. AND ALL THREE OF YOU WERE IN CHARGE OF [2081] INVESTIGATION?

A. YES, SIR.

Q. AND AT THAT TIME, WHAT DID THE THREE OF YOU DO?

A. WE REENTERED THE INTERVIEW ROOM. I ADVISED THEM CONCERNING MY SUSPICIONS.

Q. DID YOU ADVISE THEM OF YOUR SUSPICIONS IN FRONT OF MR. STANSBURY OR PRIOR TO ENTERING THE ROOM?

A. I THINK PRIOR TO ENTERING THE ROOM.

Q. AND ~~WHEN~~ YOU ADVISED THEM OF WHAT THE SUSPICIONS - WHAT WERE THOSE SUSPICIONS, OFFICER?

A. THAT MR. STANSBURY HAD TO BE CONSIDERED AS A SUSPECT IN THIS CASE.

Q. UP UNTIL THAT TIME, IT WAS NOT YOUR THOUGHT PROCESS NOR YOUR STATE OF MIND THAT MR. STANSBURY WAS TO BE CONSIDERED A SUSPECT.

IS THAT CORRECT?

A. THAT'S CORRECT.

Q. NOW, AT THAT POINT IN TIME WHEN YOU REENTERED THE ROOM, DID THE OTHER OFFICER ALSO ENTER THE ROOM WITH YOU, RIORDAN AND PATTERSON?

A. RIORDAN AND PATTERSON, YES.

Q. WHAT QUESTIONS OR STATEMENTS WERE MADE TO MR. STANSBURY AT THAT TIME?

A. AT THAT TIME I BELIEVE IT WAS DETECTIVE RIORDAN WHO READ MR. STANSBURY HIS RIGHTS FOR MIRANDA.

Q. AND WHAT WAS MR. STANSBURY'S RESPONSE AS TO THOSE RIGHTS?

[2082] A. HE INVOKED.

Q. INDICATED THAT HE UNDERSTOOD THOSE STATEMENT BUT DID NOT WISH TO MAKE THE STATEMENTS?

A. YES.

Q. UNDERSTOOD THE RIGHTS BUT DID NOT WISH TO MAKE A STATEMENT?

A. YES.

Q. ANY OTHER QUESTIONS ASKED BY YOU OR ANY OF THE OTHER OFFICERS TO MR. STANSBURY AT THAT TIME?

A. NOT BY ME.

Q. HOW ABOUT THE OTHER TWO OFFICERS?

A. I LEFT THE ROOM, AND THEY WERE POSSIBLY - TO MY RECOLLECTION, THEY WERE IN THE ROOM. BRIEFLY AFTER MY DEPARTURE, BUT I DON'T THINK IT WAS TO ANY GREAT PERIOD OF TIME.

Q. ALL RIGHT, YOU AT LEAST DID NOT HEAR ANY FURTHER STATEMENTS BY MR. STANSBURY?

A. THAT'S CORRECT.

MR. BURNS: I HAVE NO FURTHER QUESTIONS OF THIS WITNESS.

THE COURT: YOU MAY CROSS.

CROSS-EXAMINATION +

BY MR. DAUGHERTY:

Q. LIEUTENANT JOHNSTON, WHEN YOU FIRST BEGIN INVESTIGATING THIS CASE, ON WHAT DATE?

A. APPROXIMATELY 3:30 IN THE MORNING ON THE 29TH.

[2083] Q. AND PRIOR TO YOUR CONTACT OF MR. STANSBURY, CAN YOU TELL US BASICALLY WHAT INFORMATION YOU HAD REGARDING A CRIME BEING COMMITTED?

A. I HAD OBVIOUSLY THE INFORMATION FROM THE CRIME SCENE REGARDING THE AREA AND THE FACT THAT THERE WAS A WITNESS THAT COULD ESTABLISH A TIME PERIOD, ACTUAL TIME OF THE DROPPING OF THE BODY, A DESCRIPTION ON A VEHICLE AND A RATHER BROAD DESCRIPTION OF A MALE ADULT.

[2084] Q. AND YOU AT LEAST HAD A SUSPICION THAT THAT PERSON WAS INVOLVED IN THE DEATH OF ROBYN JACKSON?

A. YES.

Q. WHAT WAS THE DESCRIPTION OF THE VEHICLE THAT YOU HAD?

A. IT WAS A LATE 60'S EARLY 70'S MID-SIZED AMERICAN MAKE AUTOMOBILE, TURQUOISE IN COLOR.

Q. WHAT WAS THE DESCRIPTION OF THE PERSON THAT YOU HAD?

A. THAT IT APPEARED TO BE A MALE ADULT AND EITHER LARGE FRAME OR TALL. THE PERSON WAS A BIG MAN, BUT HIS HEIGHT WAS QUESTIONED BY THE WITNESS BECAUSE HE COULD NOT ASCERTAIN WHEN HE WAS MAKING THE HEIGHT JUDGMENT, WHETHER THE MAN WAS STANDING ON THE SIDEWALK OR STANDING ON THE ROADWAY RIGHT ALONGSIDE THE CAR.

HE FELT THAT THE PERSON WAS PROBABLY SIX FEET TALL.

Q. AND WHAT ABOUT THE TIME FRAME WHEN THESE OBSERVATIONS WERE MADE?

A. 1:30 IN THE MORNING.

Q. NOW, WHAT INFORMATION DID YOU HAVE ABOUT ANY OCCURRENCES OR EVIDENCE REGARDING THE ACTUAL DISAPPEARANCE OF ROBYN JACKSON?

MR. BURNS: I'LL OBJECT AS BEING SOMEWHAT VAGUE.

I'LL WITHDRAW THE OBJECTION AT THIS POINT.

THE WITNESS: FROM BALDWIN PARK POLICE DEPARTMENT, THERE WAS INFORMATION THAT ROBYN JACKSON HAD DISAPPEARED SHORTLY AFTER LEAVING HER RESIDENCE ON THE PREVIOUS [2085] EVENING IN THE NEIGHBORHOOD OF 6:15.

BY MR. DAUGHERTY:

Q. DID YOU TALK TO ANY WITNESSES TO OBTAIN THE INFORMATION THAT YOU'VE TOLD US ABOUT?

A. YES.

Q. WHO DID YOU TALK TO BEFORE YOU TALKED TO MR. STANSBURY?

MR. BURNS: EXCUSE ME, YOUR HONOR.

MAY I HAVE JUST A SHORT BREAK HERE? THERE'S A WITNESS ON THE PHONE THAT I BELIEVE THE DEFENSE WAS INTERESTED IN. I'D LIKE THE [sic] MAKE CONTACT WITH HIM AT THIS TIME.

THE COURT: THANK YOU, YOU MAY.

MR. BURNS: YOUR HONOR, FOR THE RECORD I JUST MADE CONTACT WITH A PERSON BY THE NAME OF WILLIE MILLER, WORKING SHERIFF INFORMATION BUREAU INDICATING SHE'LL BE HERE TOMORROW.

THE COURT: THANK YOU.

MR. BURNS: CAN I HAVE THE LAST QUESTION AND ANSWER READ BACK, PLEASE.

THE COURT: WOULD YOU PLEASE, NORMA.

(THE LAST QUESTION WAS READ BACK.)

THE WITNESS: QUITE A NUMBER OF PEOPLE. I WOULD NOT BE ABLE TO TELL YOU EVERY PERSON I SPOKE TO.

BY MR. DAUGHERTY:

Q. DID YOU TALK TO SOME CIVILIAN WITNESSES IN [2086] THE AREA WHERE ROBYN JACKSON LIVED?

A. YES.

Q. CAN YOU RECALL ANY OF THE PERSONS YOU TALKED TO?

A. WE CANVASSED THE NEIGHBORHOOD TWICE, PERSONS THAT - THERE'S A WOMAN THAT WAS LEFT IN CHARGE OF ROBYN JACKSON, MARY - I CAN'T REMEMBER HER NAME.

Q. FRIZZELL?

A. YES. AND THERE WAS A JEREMY RAMOS. THERE WERE A NUMBER OF CHILDREN AS WELL AS A NUMBER OF NEIGHBORS.

Q. DID YOU FORM A THEORY THAT ROBYN JACKSON WAS ABDUCTED FROM THE AREA AROUND HER HOUSE, AROUND THE SCHOOL PLAYGROUND THAT DAY?

A. YES.

Q. AND YOU FORMED THAT THEORY WELL BEFORE AN INTERVIEW WITH MR. STANSBURY?

A. YES.

Q. WHAT INFORMATION DID YOU HAVE WHICH LED YOU TO ICE CREAM TRUCK DRIVERS AT ALL?

MR. BURNS: OBJECTION, YOUR HONOR.

I'LL NOT SURE THERE'S BEEN - ASSUMES FACTS NOT IN EVIDENCE, I'M NOT SURE THERE'S BEEN ANY TESTIMONY THAT AT THE TIME THEY MET MR. STANSBURY THEY BELIEVED THAT AN ICE CREAM TRUCK MAN WAS NECESSARILY INVOLVED.

THE COURT: LET HIM INQUIRE.

OVERRULED.

DO YOU UNDERSTAND THE QUESTION?

[2087] THE WITNESS: IT'S BROAD. I WILL ATTEMPT TO ANSWER IT, SIR.

THERE WERE A NUMBER OF POSSIBILITIES THAT WE WERE PURSUING AT ANY GIVEN TIME. ONE OF WHICH WAS THE POSSIBILITY OF AN ICE CREAM TRUCK BECAUSE SHE HAD BEEN SEEN TALKING TO SOMEBODY IN AN ICE CREAM TRUCK EARLIER THAT - LATE IN THE AFTERNOON BUT EARLIER THAN THE TIME OF DISAPPEARANCE. BY MR. DAUGHERTY:

Q. YOU HAD INFORMATION THAT THE LAST PERSON SHE WAS SEEN WITH WAS AN ICE CREAM TRUCK DRIVER?

A. NOT THE LAST PERSON.

Q. DIDN'T JEREMY RAMOS TELL YOU THAT THE LAST PERSON HE SAW HER WITH WAS AN ICE CREAM TRUCK DRIVER ABOUT 6:30 IN THE EVENING?

A. I THINK JEREMY RAMOS SAW HER GOING IN THE DIRECTION OF AN ICE CREAM TRUCK, I DON'T

KNOW THAT HE EVER GOT TO THE POINT OF SAYING HE ACTUALLY SAW COMMUNICATIONS BETWEEN THE VICTIM AND AN ICE CREAM TRUCK OCCUPANT AT 6:30. IT WAS ONE IN THE VICINITY APPROACHING APPARENTLY ROBYN JACKSON'S -

Q. DID ANYONE EVER TELL YOU - IS THERE ANY WITNESS WHO EVER TOLD YOU THAT THEY SAW ROBYN JACKSON TALKING WITH AN ICE CREAM TRUCK DRIVER LATE IN THE EVENING?

MR. BURNS: OBJECTION, YOUR HONOR. VAGUE AS TO POINT IN TIME.

WE'RE TALKING AT SOMETIME PRIOR TO THE [2088] INTERVIEW WITH MR. STANSBURY OR AT SOME SUBSEQUENT POINT?

THE COURT: SUSTAINED.

BY MR. DAUGHERTY:

Q. IS THERE ANY CIVILIAN WITNESS THAT YOU TALKED TO BEFORE YOUR CONVERSATION WITH MR. STANSBURY WHO TOLD YOU THEY SAW ROBYN JACKSON TALKING TO AN ICE CREAM TRUCK DRIVER THE AFTERNOON OF THE 28TH OF SEPTEMBER?

A. I CANNOT STATE POSTIVELY IN REFERENCE TO ITS RELATIONSHIP TO MY TALKING TO MR. STANSBURY. I KNOW THAT I WAS TOLD THAT BUT WHETHER OR NOT I WAS TOLD THAT THE AFTERNOON OF THE 29TH I CANNOT RECALL.

Q. BUT DIDN'T JEREMY RAMOS TELL YOU ABOUT A PREARRANGED MEETING WITH AN ICE

CREAM TRUCK DRIVER, WHO WAS A MALE WITH RED HAIR AND A BUSHY BEARD?

A. YES.

BUT AGAIN, I DON'T - WE SPOKE TO JEREMY RAMOS ON A NUMBER OF DATES.

RAMOS' SPECIFIC INFORMATION RELATIVE TO ANY PARTICULAR INTERVIEW IS DIFFICULT TO RECALL.

Q. WHAT I'M TRYING TO GET AT IS THE INFORMATION YOU HAVE FROM SOME CIVILIAN WITNESSES REGARDING AN ICE CREAM TRUCK DRIVER.

YOU MADE CONTACT WITH MORE THAN ONE ICE CREAM TRUCK DRIVER?

A. YES, SIR.

Q. WHY DID YOU MAKE CONTACT WITH ANY ICE CREAM TRUCK DRIVER AT ALL?

A. BECAUSE THEY HAD BEEN IN THE AREA.

[2089] Q. DID YOU HAVE ANY INFORMATION SPECIFICALLY ABOUT A MAN WITH RED HAIR AND A BUSHY BEARD?

A. YES.

Q. WHAT INFORMATION HAD YOU RECEIVED?

A. I DON'T KNOW THAT I HAD THAT INFORMATION ON THE 29TH.

I HAD INFORMATION REGARDING A WHITE MALE AND A BLACK MALE, A WHITE TRUCK AND A

BLUE TRUCK, AS TO THE SPECIFIC DESCRIPTION OF MR. STANSBURY ON THE 29TH FROM WITNESSES, I CAN'T STATE THAT I ACTUALLY HAD THAT INFORMATION.

Q. DO YOU REMEMBER TALKING TO SHARON SANCHEZ?

A. YES.

Q. THE VICTIM'S MOTHER?

A. YES.

Q. THE LADY WHO'S HERE IN COURT. DO YOU REMEMBER WHEN THAT FIRST CONVERSATION TOOK PLACE?

A. MY FIRST - NO, IT WOULD BE ON THE 29TH BUT I COULDN'T TELL YOU WHAT TIME OF DAY.

Q. YOU TALKED TO MR. STANSBURY AT WHAT TIME ON THE 29TH?

A. THAT WAS AROUND 2300 - 11:00 P.M.

Q. WAS IT BEFORE 11:00 P.M.?

A. YES.

Q. SO THE CONVERSATION YOU HAD WITH SHARON SANCHEZ ON THE 29TH WAS BEFORE YOU CONTACTED MR. STANSBURY?

[2090] A. YES.

Q. DO YOU RECALL THE INFORMATION SHE GAVE YOU REGARDING AN ICE CREAM TRUCK DRIVER?

A. NOT AT THIS TIME.

Q. DID YOU PREPARE A REPORT REGARDING THE CONVERSATION YOU HAD WITH HER?

A. I BELIEVE SO, YES.

Q. WOULD IT HELP AT ALL, YOU THINK, TO REFER TO THAT?

A. YES.

Q. OKAY.

MR. DAUGHERTY: MAY I APPROACH, YOUR HONOR?

THE COURT: YES, YOU MAY.

MR. DAUGHERTY: YOUR HONOR, WILL THE RECORD REFLECT I HAVE GIVEN LIEUTENANT JOHNSTON TWO PAGES OF SHERIFF'S POLICE REPORTS, PAGE 10 AND PAGE 11 OF REPORTS DATED OCTOBER 2ND, 1992.

BY MR. DAUGHERTY:

Q. DO YOU RECOGNIZE THOSE REPORTS?

A. YES, SIR.

Q. ARE THOSE REPORTS OF THE CONVERSATIONS YOU HAD WITH SHARON SANCHEZ?

A. YES, SIR.

Q. I'LL GIVE YOU AN OPPORTUNITY TO REVIEW THOSE.

A. THANK YOU.

A. THANK YOU.

Q. DID SHARON SANCHEZ GIVE YOU ANY INFORMATION THAT YOU CONSIDERED SIGNIFICANT ABOUT ICE CREAM TRUCK [2091] DRIVERS?

A. SHE GAVE US SOME INFORMATION SHE HAD FROM JEREMY RAMOS, YES.

Q. WHAT DID YOU LEARN FROM HER?

A. SHE STATED THAT JEREMY RAMOS HAD TOLD HER THAT ROBYN JACKSON HAD GONE TO MEET AN ICE CREAM TRUCK DRIVER AND THAT HE WAS A WHITE MALE WITH RED HAIR AND A BUSHY BEARD.

Q. AND THIS WAS AFTER DINNER THAT NIGHT?

A. YES.

Q. ON THE 28TH?

A. YES.

THE COURT: THE RECORD SHOULD REFLECT THAT MR. ROBUSTO IS NOW HERE.

MR. ROBUSTO: THANK YOU, YOUR HONOR.
BY MR. DAUGHERTY:

Q. DID SHE TELL YOU THAT JEREMY HAD INDICATED THAT AFTER DINNER ROBYN HAD LEFT AND RETURNED TO THE SCHOOL GROUND AREA JUST WHEN IT WAS GETTING DARK TO MEET WITH THIS ICE CREAM MAN AGAIN?

A. YES

Q. AND THE DESCRIPTION OF THAT MAN WAS RED HAIR AND BUSHY RED BEARD?

A. MALE CAUCASIAN WITH BUSHY BEARD AND RED HAIR.

Q. DID YOU HAVE ANY INFORMATION FROM ANYBODY THAT THAT PARTICULAR ICE CREAM TRUCK DRIVER HAD BEEN PARTICULARLY FRIENDLY WITH ROBYN IN THE PAST, HAD SOME CONTACT WITH HER BEFORE?

[2092] A. I BELIEVE SO, YES.

Q. AND DID YOU TALK TO DON HELMER, THE YOUNG MAN IN THE NEIGHBORHOOD TOO, DID YOU NOT?

A. YES.

Q. AND DIDN'T HE INDICATE TO YOU THAT SOMETIME LATE THAT AFTERNOON, SOMETIME AROUND FIVE O'CLOCK IN THE AFTERNOON, THE LAST TIME HE SAW ROBYN JACKSON SHE WAS TALKING TO AN ICE CREAM TRUCK DRIVER?

A. I'M NOT SURE OF THE TIME, BUT I BELIEVE HE'S THE ONE THAT SAID THAT SHE WAS TALKING TO AN ICE CREAM TRUCK DRIVER, BEFORE HER GOING IN AND EATING.

Q. DIDN'T YOU CONSIDER THE POSSIBILITY THAT THERE WAS A POSSIBILITY THAT AN ICE CREAM TRUCK DRIVER HAD ABDUCTED ROBYN JACKSON?

A. CERTAINLY A POSSIBILITY.

Q. THEN AT SOME POINT IN TIME, YOU DECIDED TO CONTACT ROBERT STANSBURY?

A. YES.

Q. BEFORE YOU HAD THE CONVERSATION WITH HIM, HAD ANYBODY RUN A RAP SHEET ON HIM AT ALL?

A. YES, SIR.

Q. WHO HAD DONE THAT?

A. I HAD ASKED FOR IT TO BE DONE BY AN OFFICER FROM BALDWIN PARK POLICE DEPARTMENT.

Q. WHEN DID YOU ASK FOR THAT?

A. IT HAD TO BE LATE IN THE AFTERNOON OR EARLY IN THE EVENING OF THE 29TH.

Q. AND HOW DID YOU OBTAIN THE NAME ROBERT - I [2093] ASSUME YOU HAD THE NAME ROBERT STANSBURY BEFORE YOU CONTACTED HIM?

A. YES.

Q. HOW DID YOU ACTUALLY OBTAIN A NAME - STRIKE THAT. THE PEOPLE YOU TALKED TO IN THE NEIGHBORHOOD JUST SIMPLY GAVE YOU A DESCRIPTION OF A RED HAired ICE CREAM TRUCK DRIVER, AND NO ONE ACTUALLY KNEW A FULL NAME OF THAT PERSON, IS THAT CORRECT?

A. THAT'S CORRECT.

Q. HOW DID YOU GO ABOUT GETTING THAT NAME?

A. WELL, I ADVISED BALDWIN PARK THAT I NEEDED TO ASCERTAIN THE NAME OR IDENTIFICATION OR ANY INFORMATION REGARDING ANY ICE CREAM TRUCK DRIVERS THAT MAY BE FREQUENT GO THE BALDWIN PARK AREA, CONSIDERING CITATIONS OR WHATEVER THAT MIGHT LEAD TO IT.

ONE PERSON CAME FORWARD AND INDICATED THAT HE HAD RECEIVED A CALL TO GO TO A RESIDENCE AT APPROXIMATELY 4:30 IN THE AFTERNOON, TO THE BEST OF MY RECOLLECTION, IN BALDWIN PARK ON THE AFTERNOON OF THE 28TH TO KEEP THE PEACE, AS IT WERE, BECAUSE AN ICE CREAM TRUCK DRIVER HAD BACKED INTO A FENCE AT A WOMAN'S PROPERTY.

HE RESPONDED TO THAT LOCATION, HE SAW THAT THE WOMAN GOT THE INFORMATION FOR THE DRIVER FOR THE PURPOSES OF HAVING HER FENCE REPAIRED, AND WHEN HE FOUND OUT THAT I WAS MAKING INQUIRIES REGARDING PERSONS THAT MAY HAVE BEEN IN THE AREA, HE RETURNED TO THAT LOCATION AND COPIED THE INFORMATION THAT MR. STANSBURY HAD GIVEN THAT [2094] WOMAN, HE THEN GAVE ME THAT INFORMATION.

Q. OKAY. AND SO AT SOME POINT IN TIME YOU ASKED SOMEBODY FROM BALDWIN PARK P.D. TO RUN A RAP SHEET ON MR. STANSBURY?

A. YES.

Q. DID YOU GET THAT INFORMATION BACK?

A. YES, I DID.

Q. WHEN DID YOU GET THAT BACK?

A. I GOT IT BACK WITHIN FIVE OR TEN MINUTES.

Q. SO WHAT TIME WAS THIS, APPROXIMATELY, IF YOU CAN GIVE US?

A. MY RECOLLECTION IS THIS ALL TOOK PLACE SOMEWHERE NEAR 6:00 OR 7:00 P.M.

Q. NOW, YOU HAD TALKED TO QUITE A FEW WITNESSES BEFORE 6:00 OR 7:00 P.M.?

A. YES.

Q. ON THE 29TH, YOU SPENT THE ENTIRE DAY ESSENTIALLY INVESTIGATING THE CRIME?

A. CANVASSED THE NEIGHBORHOOD TWICE.

Q. YOU INDICATED YOU TALKED TO DONALD HELMER. HE WAS A YOUNG MAN OF ABOUT 18 YEARS OF AGE?

A. TO THE BEST OF MY INFORMATION, YES.

Q. AND YOU TALKED TO A LOT OF OTHER NEIGHBORS, PEOPLE IN THE GENERAL AREA?

A. YES.

Q. TALKED TO PEOPLE - FOR INSTANCE, YOU TALKED TO MAYBE SHARON SANCHEZ' EX-HUSBAND?

[2095] A. I DON'T REMEMBER.

Q. DID YOU RUN ANY OTHER RAP SHEET BESIDES MR. STANSBURY ON THE 29TH?

A. YES.

Q. WHO ELSE DID YOU RUN?

A. WELL, AT THE SAME TIME I HAD - I ASKED THE RECORD CLERK I BELIEVE TO RUN STANSBURY AND ALSO RUN THIS YUSUF.

Q. TWO ICE CREAM TRUCK DRIVERS?

A. YES.

Q. OKAY. DID YOU AT THAT POINT IN TIME CONSIDER ONE OF THOSE ICE CREAM TRUCK DRIVERS MIGHT BE A POSSIBLE SUSPECT IN THIS CASE?

A. MIGHT BE A POSSIBLE? CERTAINLY.

Q. WHAT WAS THE PURPOSE IN RUNNING A RAP SHEET ON THEM.

DID YOU RUN ONE ON DONALD HELMER?

A. I KNOW WE RAN RAPS - THIS IS JUST FOR A AUTOMATED SYSTEM, IT'S NOT SENDING FOR THE WHOLE PACKAGE. IT'S ONE OF THOSE TOOLS.

A NUMBER OF PEOPLE BUT I CAN'T RECALL SPECIFICALLY WHO ELSE I DID A RECORD CHECK ON AND AT WHAT TIME, EXCEPT THAT I KNOW THAT I RAN OR HAD RUN STANSBURY AND THE YUSUF INDIVIDUAL AT THE SAME TIME AND THE IDENTIFICATION OF OTHER PERSONS AND THE TIME THAT I MADE INQUIRY REGARDING THEIR RECORD I CANNOT RECALL AT THIS TIME.

[2096] Q. OKAY.

FROM ANY OF THE RECORDS THAT YOU RAN, DID YOU GET ANYBODY BACK WITH ANY SIGNIFICANT CRIMINAL HISTORY?

A. NO.

Q. DID YOU GET ANYTHING BACK ON ROBERT STANSBURY?

A. IT INDICATED THAT IT WAS NO HIT, AUTOMATED SYSTEM.

Q. YOU LATER HAD A CONVERSATION WITH MR. STANSBURY AT THE POMONA POLICE STATION?

A. YES.

Q. CAN YOU TELL ME SPECIFICALLY WHERE THAT INTERVIEW ROOM IS LOCATED?

A. IT'S LOCATED ON THE GROUND FLOOR AND I WOULD SAY IT WOULD BE IN PROXIMITY TO THE BOOKING AREA OF THE POMONA JAIL.

Q. ARE YOU FAMILIAR WITH THE POMONA JAIL FACILITIES?

A. NO.

Q. HAVE YOU CONDUCTED INTERVIEWS THERE ON MORE THAN ONE OCCASION?

A. I HAD - NO, I NEVER CONDUCTED ANY INTERVIEWS IN THAT FACILITY.

Q. HAVE YOU SINCE THAT DATE?

A. I'VE BEEN BACK IN THAT FACILITY BUT I CAN'T RECALL THAT I HAD ANY INTERVIEW THERE.

Q. WAS THERE A POMONA POLICE OFFICER PRESENT DURING THE INTERVIEW?

[2097] A. NO.

Q. THERE ARE INTERVIEW ROOMS IN OTHER PARTS OF THAT JAIL, ARE THERE NOT?

A. THERE IS INTERVIEW ROOMS IN OTHER PORTIONS OF THE FACILITY.

Q. YES.

A. WHETHER THERE'S INTERVIEW ROOMS IN OTHER PORTIONS OF THAT JAIL. I DO NOT KNOW.

I THINK - AS I RECALL, THERE'S MORE THAN ONE INTERVIEW ROOM WHERE WE WERE, PLUS A NUMBER OF INTERVIEW ROOMS UPSTAIRS.

Q. CAN YOU DESCRIBE THE LAYOUT THERE, THE PHYSICAL PLANT WHERE - THE GENERAL AREA WHERE YOU CONDUCTED THE INTERVIEW.

WHAT IS LOCATED IN THAT IN THAT GENERAL AREA OF THE JAIL?

A. IT'S RIGHT AT WHAT WE WOULD CALL THE BOOKING CAGE, I GUESS, WHICH IS IMMEDIATELY ADJACENT TO AN EXTERIOR DOOR.

AND THERE'S ALSO AN INTERIOR DOOR TO THE REMAINDER OF THE FACILITY THAT'S IN CLOSE PROXIMITY.

AS I RECALL, THE ONLY TIME I WAS IN THERE WAS THAT EVENING. AND IT SEEMS TO ME LIKE ACROSS THE CORRIDOR AND MAYBE SLIGHTLY UP

THE HALLWAY IS WHERE THE ACTUAL BOOKING TANK WOULD BE, WHICH WOULD BE ALMOST IMMEDIATELY WITHIN THE EXTERIOR DOOR.

BUT THAT'S -

Q. AREN'T THERE INTERVIEW ROOMS UPSTAIRS IN THE [2098] ACTUAL POLICE DEPARTMENT?

A. YES.

Q. WHY DID YOU NOT USE ONE OF THOSE?

A. WE DID. WE WENT IN THE FACILITY THROUGH THE FRONT DOOR WITH YUSUF, MY PARTNERS AND MYSELF.

IT CAUSED QUITE A BIT OF DIFFICULTY BECAUSE THERE IS NOBODY UPSTAIRS IN THE POMONA POLICE DEPARTMENT AFTER FIVE O'CLOCK AT NIGHT.

SO THERE WAS SOME DIFFICULTY IN ACCESSING A KEY, GETTING PERMISSION. ONE OF THE REASONS WE HAD ONLY JUST BEGUN INTERVIEWING YUSUF WHEN WE WERE ADVISED MR. STANSBURY WAS DOWNSTAIRS WAS THE DELAY IN GETTING PERMISSION TO GO UPSTAIRS, FINDING A KEY TO GO UPSTAIRS AND IT SEEMED MORE CONSIDERATE OF MR. STANSBURY TO COME TO HIM THAN TO MOVE HIM AROUND THE FACILITY ANYMORE.

Q. WHERE DID YOU INTERVIEW YUSUF?

A. UPSTAIRS IN ONE OF THE INTERVIEW ROOMS OFF THE INVESTIGATIVE BUREAU.

Q. DID YOU ADVISE YUSUF OF HIS RIGHTS PRIOR TO OBTAINING A STATEMENT FROM HIM?

A. I WAS THERE ONLY AT THE BEGINNING AND HE WAS NOT ADVISED OF HIS RIGHTS.

Q. YOU WERE ACTUALLY PRESENT WHEN YUSUF WAS INITIALLY CONTACTED BY POLICE OFFICERS?

A. YES, SIR.

Q. WERE YOU PRESENT ON THE INITIAL ENTRY IN YUSUF'S APARTMENT?

A. YES, SIR.

[2099] Q. CAN YOU TELL US WHAT OCCURRED AT THAT LOCATION AS FAR AS THE CONTACT OF MR. NYANGANIRA?

A. WE KNOCKED ON THE DOOR AND IDENTIFIED OURSELVES, THE PERSON INSIDE DIDN'T WANT TO OPEN THE DOOR INITIALLY AND IT WAS A FEMALE VOICE. WHAT'S THIS ABOUT? KIND OF QUESTIONS THROUGH THE DOOR.

AND I FINALLY CONVINCED HER THAT SHE SHOULD OPEN THE DOOR AND SEE THE IDENTIFICATION AND WE COULD MORE READILY CONVERSE BECAUSE WE'RE IN AN APARTMENT COMPLEX, WHICH WAS ONLY CALLING ATTENTION TO THE OCCUPANTS OF THAT APARTMENT, US KNOCKING ON THE DOOR.

SO THIS WOMAN ANSWERED THE DOOR. SHE OPENED THE DOOR FINALLY AND I IDENTIFIED

MYSELF AND I TOLD HER THAT WE WERE LOOKING TO CONTACT YUSUF - I'M NOT EVEN GOING TO TRY TO PRONOUNCE HIS LAST NAME. I THINK WE ALL UNDERSTAND WHO I'M REFERRING TO.

AND SHE TOLD ME THAT HE WAS NOT THERE, BUT HER BEHAVIOR WAS SUSPICIOUS.

Q. NOW, YUSUF WAS NOT A SUSPECT IN THIS CASE EITHER, WAS HE?

A. NO.

Q. WOULD YOU RATE HIM BASICALLY ON THE SAME FOOTING YOU WOULD MR. STANSBURY AT THAT POINT IN TIME AT LEAST?

A. YES.

Q. ALL RIGHT.

YOU INDICATED SHE SAID, THE FEMALE OCCUPANT INDICATED THAT YUSUF WAS NOT IN THE APARTMENT?

[2100] A. YES.

Q. BUT HER BEHAVIOR WAS SOMEWHAT SUSPICIOUS?

A. YES.

Q. AND CAN YOU TELL ME HOW IT WAS SUSPICIOUS?

A. WELL, I CAN'T DESCRIBE IT SPECIFICALLY, BUT BASED ON MY EXPERIENCE, I KNEW SHE WAS LYING OR FELT SHE WAS LYING.

Q. ALL RIGHT. SO WHAT DID YOU DO?

A. I LOOKED AROUND THE ROOM. I DID NOT GO INTO THE FACILITY. I WAS ABLE TO SEE FROM MY POSITION AT THE DOORWAY THAT THERE WAS A SET OF CAR KEYS AND A WATCH ON A COUNTER IMMEDIATELY INSIDE THE DOOR.

I ASKED HER IF SHE DROVE AND SHE INDICATED SHE DID NOT DRIVE. I ASKED HER IF SHE WAS ABLE TO DRIVE AND SHE SAID NO. I ASKED HER IF SHE HAD A CAR AND SHE SAID NO.

I ASKED HER IF SHE HAD A WATCH AND SHE SHOWED ME HER WATCH. I INDICATED THAT THERE WAS KEYS TO A CAR, IT APPEARED TO ME AND WHAT APPEARED TO BE A MAN'S WATCH ON THE COUNTER.

WELL, HER BEHAVIOR THEN FURTHER CONFIRMED THAT YUSUF FOR SOME REASON OR OTHER WAS CONCEALING HIMSELF WITHIN THE FACILITY.

Q. WHAT DID YOU DO AT THAT POINT?

A. I DIRECTED SOME OF THE OFFICERS WITH ME, I DON'T REMEMBER SPECIFICALLY WHO, THAT HE WAS PROBABLY IN THE BEDROOM. IT - IT APPEARED TO BE THREE-ROOM [2101] APARTMENT, VERY SMALL APARTMENT. AND I DIRECTED THE OFFICERS INTO THE BEDROOM BECAUSE I FELT HE WAS IN THERE. IF THAT SAME SITUATION HAD EXISTED WITH MR. STANSBURY, WOULD YOU HAVE DONE THE SAME THING?

MR. BURNS: OBJECTION, YOUR HONOR, VAGUE.

I'M NOT SURE I UNDERSTAND WHAT THE RELEVANCY OR THE INTENT OF THE QUESTION IS.

THE COURT: SPECULATIVE, SUSTAINED.

BY MR. DAUGHERTY:

Q. WHAT HAPPENED? YOU WENT INSIDE THE APARTMENT AND WAS YUSUF HIDING OR WAS HE SLEEPING OR?

A. HE APPEARED TO BE SLEEPING ON THE BED.

Q. DID YOU AROUSE HIM OR SOMEONE AROUSE HIM?

A. YES.

Q. THEN HE WAS INVITED DOWN TO THE POLICE DEPARTMENT?

A. YES.

Q. NOW, IF - STRIKE THAT. SO YOU INTERVIEWED YUSUF UP IN THE POMONA POLICE DEPARTMENT SECTION, NOT IN THE JAIL?

A. THAT'S CORRECT.

Q. DID YOU COMPLETE YOUR INTERVIEW WITH HIM BEFORE YOU WENT TO SEE MR. STANSBURY?

A. NO.

Q. DID SOMEONE ELSE COMPLETE THE INTERVIEW?

A. YES. SERGEANT PATTERSON AND DEPUTY RIORDAN CONTINUED THE INTERVIEW WITH YUSUF WHEN I WENT DOWNSTAIRS.

Q. YOU WENT DOWNSTAIRS AND WHAT DID YOU SEE WHEN [2102] YOU WENT DOWNSTAIRS REGARDING MR. STANSBURY?

A. I SAW HE WAS SEATED IN AN INTERVIEW ROOM AND THAT DEPUTY - SERGEANT HIGGENBOTHAM AND THE OTHER BALDWIN PARK OFFICERS WERE THERE AWAITING MY ARRIVAL.

Q. NOW, BY THIS TIME, APPROXIMATELY WHAT TIME WAS IT?

A. I BELIEVE WE HAVE INDICATED ON THE REPORT THAT THE INTERVIEW BEGAN AT 2300 HOURS, SO THIS WOULD HAVE TO BE - I DID NOT DELAY IN GOING IMMEDIATELY INTO THE INTERVIEW ROOM.

Q. HOW BIG IS THIS INTERVIEW ROOM?

A. THIS WOULD ONLY BE TO THE BEST OF MY RECOLLECTION, BUT IT WAS FAIRLY - IT WAS LONG FOR AN INTERVIEW ROOM, AT LEAST LONGER THAN SOME WE HAVE IN OUR FACILITIES, BUT IT WAS NOT ANY WIDER, PER SE.

MY ESTIMATE WOULD BE THAT THE ROOM WAS MAYBE 10 FEET DEEP FROM THE DOORWAY BY 8 FEET, 8 BY 10, PROBABLY.

Q. THERE WAS A TABLE CONTAINED?

A. THERE WAS A TABLE AND THREE OR FOUR CHAIRS.

Q. DID YOU CLOSE THE VOOR TO THE INTERVIEW ROOM WHEN YOU WERE INSIDE?

A. I DON'T RECALL.

Q. WERE THERE MORE THAN ONE DOOR TO THE ROOM?

A. NO.

Q. DID THAT DOOR LOCK?

A. I DON'T KNOW.

Q. WHO ALL WAS PRESENT INSIDE THE ROOM WHEN THE [2103] INTERVIEW TOOK PLACE?

A. OFFICER BELL AND MYSELF AND MR. STANSBURY.

Q. NO OTHER OFFICERS WERE PRESENT?

A. THAT'S CORRECT.

Q. WERE YOU ALL SEATED?

A. CORRECT.

Q. ACROSS FROM EACH OTHER OR TABLE?

A. YES, OFFICER BELL AND MYSELF WERE ON ONE SIDE OF THE TABLE AND MR. STANSBURY WAS ON THE OTHER SIDE.

Q. WHAT WAS THE FIRST THING THAT YOU ASKED MR. STANSBURY AT THAT POINT?

A. I ASKED HIM IF HE WAS ROBERT STANSBURY. AND WHAT HIS RESIDENCE WAS, WHAT HIS AGE WAS. I, OF COURSE, IDENTIFIED MYSELF, IF I REMEMBER.

Q. DID YOU INDICATE TO HIM WHY YOU WANTED TO TALK TO HIM?

A. YES.

Q. WHAT DID YOU TELL HIM AT THAT TIME?

A. THAT WE WERE CONDUCTING AN INVESTIGATION REGARDING THE DISAPPEARANCE OF A YOUNG GIRL IN THE BALDWIN PARK AREA ON THE PREVIOUS DAY.

Q. AND DID HE SAY ANYTHING, MAKE ANY RESPONSE TO THAT?

A. HE JUST ACKNOWLEDGED -

Q. WHAT DID YOU ASK HIM AS FAR AS INFORMATION ABOUT THE ALLEGED OFFENSE?

A. I INDICATED THAT I WOULD LIKE TO DISCUSS WITH HIM HIS ACTIONS IN BALDWIN PARK FROM THE PREVIOUS DATE.

[2104] Q. WHAT WAS YOUR PURPOSE IN HAVING THE CONVERSATION WITH HIM AT THAT POINT? WHAT DID YOU THINK YOU MIGHT GET FROM HIM?

A. IDENTIFY WHETHER HE WAS A WITNESS. IDENTIFY IF HE WAS EVEN IN THE AREA IN A TIME THAT MIGHT CAUSE ME TO INVESTIGATE HIM FURTHER AS A SUSPECT.

Q. SO YOU ASKED HIM TO EXPLAIN WHAT HIS ACTIONS WERE IN BALDWIN PARK THE PREVIOUS DAY?

A. YES.

Q. AND WHAT DID HE SAY TO THAT?

A. WELL, I THINK INITIALLY I STARTED TO JUST FOCUS ON IF HE WAS ON PHELAN STREET ANYWHERE AROUND 6:00 P.M. ON THE PREVIOUS DAY.

AND THAT'S WHEN WE DETERMINED THAT THE ACTUAL NAME OF THE STREET WOULD NOT BE OF ANY VALUE SINCE HIS FAMILIARITY WITH STREET NAMES WAS MINIMAL. AND AS TO HIS TIME BEING IN CERTAIN AREA, THAT AGAIN WOULD JUST BE TO USE HIS WORD, A GUESSTIMATE.

SO IN ORDER TO FACILITATE THE CHRONOLOGICAL OCCURRENCE OF EVENTS ON THAT DAY, WE STARTED AT A TIME AND A LOCATION WHICH HE COULD MORE SPECIFICALLY REFERENCE AND THAT WAS THE BEGINNING OF HIS ROUTE AND THE AREA IN WHICH HIS ROUTE BEGAN.

Q. NOW, DID HE BASICALLY LAYOUT THE ENTIRE DAY FOR YOU UP TILL SIX O'CLOCK IN THE AFTERNOON OR DID YOU CONTINUE ASKING HIM SPECIFIC QUESTIONS?

A. NO, IT WAS FAIRLY NARRATIVE, PRETTY MUCH FLOWING.

[2105] Q. WHEN HE WAS TALKING ABOUT THE EARLY MORNING HOURS AND THE DAY UP TILL SIX O'CLOCK IN THE EVENING OR 6:30 IN THE EVENING, ABOUT HOW LONG DID THAT PART OF THE CONVERSATION TAKE?

A. I COULDN'T REALLY SAY. BUT IT DOESN'T SEEM TO ME THAT IT TOOK A LONG TIME.

MR. BURNS: YOUR HONOR, MAY I HAVE JUST A SHORT BREAK. I HAVE A WITNESS THAT I

DON'T THINK WE'RE GOING TO BE ABLE TO GET TO TODAY.

THE COURT: YES.

10:30.

[2106] THE COURT: YOU MAY PROCEED, MR. DAUGHERTY. BY MR. DAUGHERTY:

Q. HOW LONG DID IT TAKE FOR THE DISCUSSION OF HIS ACTIONS UP UNTIL - DURING THAT PERIOD OF TIME, DID MR. STANSBURY EVER ASK YOU IF HE COULD LEAVE?

A. NO.

Q. GO TO THE BATHROOM, GET SOME CIGARETTES?

A. NO.

Q. DIDN'T HE EXPRESS SOME CONCERN ABOUT CIGARETTES, THAT HE HAD BEEN OUT OF CIGARETTES?

A. HE MAY HAVE ASKED IF WE HAD A CIGARETTE. BUT I DON'T SMOKE. HE MAY HAVE.

Q. DID HE EVER ASK IF HE COULD GO GET A PACK OF CIGARETTES?

A. NO.

Q. NOW, DID YOU ASK HIM AT ANY POINT IN TIME ANYTHING MORE ABOUT WHO HE HAD SEEN OR WHAT HE HAD DONE AROUND 6 O'CLOCK IN THE NEIGHBORHOOD WITH ROBYN JACKSON? DID YOU ASK HIM ABOUT HIS ROUTE HOME?

A. YES.

Q. CAN YOU RECALL WHAT YOU SAID TO HIM REGARDING THAT?

A. WELL, MOST OF THE INFORMATION CONCERNING HIS ROUTE OF TRAVEL WAS NARRATED.

IT WAS NOT ANYTHING I SAID TO HIM. HE PRETTY MUCH VOLUNTEERED HIS ROUTE AND THE FACT THAT HE STOPPED FOR GASOLINE AND ABOUT WHAT TIME HE GOT HOME, BASED ON HOW HIS TRUCK WAS PERFORMING, AND HE - WE DISCUSSED ARROW [2107] HIGHWAY VERSUS GOING OVER KELLOGG HILL.

Q. NOW AT THAT POINT IN TIME, WERE YOU ASKING HIM ANY QUESTIONS REGARDING HIS ROUTE HOME, OR WAS THAT JUST SOMETHING HE WAS JUST VOLUNTARILY TALKING ABOUT?

A. VOLUNTARILY TALKING ABOUT, YES.

Q. DIDN'T YOU ASK HIM ANYTHING SPECIFICALLY ABOUT WHAT GAS STATION HE WENT TO?

A. WELL, HE SAID HE STOPPED FOR GAS, AND I ASKED HIM IF HE RECALLED WHERE OR WHAT SERVICE STATION IT WAS, WHERE IT WAS LOCATED.

AND HE SAYS NO, HE DOESN'T KNOW THE STREET, OR THE NEAREST INTERSECTION OR THE ADDRESS OR EVEN THE NAME OF THE SERVICE STATION EXCEPT THAT IT WAS REAL - JUST RIGHT OFF THE STREET AND THAT THE CASHIERS' BOOTH WAS IMMEDIATELY IN THE PUMP AREA.

Q. WAS THAT SOMEWHAT OF A CASUAL CONVERSATION, OR A FAIRLY DETAILED CONVERSATION ABOUT HIS TRIP HOME AND HIS ROUTE AND WHAT HE DID ON HIS WAY HOME?

MR. BURNS: OBJECTION. WITHDRAW THE OBJECTION?

THE WITNESS: IT WAS FAIRLY CASUAL.

BY MR. DAUGHERTY:

Q. DID YOU ASK SOME QUESTIONS ABOUT IT?

A. INSTANCES RELATIVE TO TIME, YES.

Q. CAN YOU RECALL ANY OF THOSE QUESTIONS RELATIVE TO TIME?

A. WELL, WHEN HE INDICATED THAT HE LEFT THE BALDWIN PARK AREA IN ROUTE HOME, I ASKED HIM IF HE COULD TELL ME ABOUT WHAT TIME THAT WAS.

[2108] THE INDICATED IT WAS ABOUT 6:30 OR 7:00 P.M.

THEN HE INDICATED HE TOOK SOME TIME TO GET HOME. HE HAD TO STOP FOR GAS.

HE HAD TO GO ON A ROUTE UNUSUAL FROM HIS ROUTE OF TRAVEL. SO IT TOOK SOMETIME TO GET HOME.

FOLLOWING THAT I ASKED HIM DOES HE HAVE ANY IDEA WHAT TIME IT WAS THAT HE ARRIVED HOME.

Q. WHY DID YOU ASK THAT QUESTION?

IF HE WERE SIMPLY A WITNESS TO THE EVENT OR TO WHAT HE MIGHT HAVE SEEN AT THE BALDWIN PARK AREA AT 6 O'CLOCK IN THE AFTERNOON, WHY DID YOU ASK HIM THAT?

AT THAT POINT, WAS HE BECOMING SOMEWHAT OF A SUSPECT PERHAPS?

A. NO. ANY TIME YOU'RE INTERVIEWING A PERSON, THE POSSIBILITY OF A FUTURE NEED TO VERIFY PART OR A PORTION OF AN INTERVIEW EXISTS.

SO I ALWAYS, AS A MATTER OF COURSE, ATTEMPT TO GET SOMETHING THAT WILL SERVE AS A RECOLLECTION POINT OR REFERENCE POINT FOR A WITNESS IN RECALLING HIS INFORMATION PROVIDED TO ME AT A LATER DATE.

Q. TELL ME ABOUT THE CONVERSATION YOU HAD WITH HIM REGARDING THE GAS STATION.

A. IT WAS MERELY THAT. THAT HE SAID HE STOPPED FOR GAS.

AND I ASKED HIM WHERE HE STOPPED FOR GAS; WHAT KIND OF A SERVICE STATION IT WAS.

AND HE STATED THAT IT WAS PROBABLY DOWN THE ROAD FROM BALDWIN PARK ON ARROW HIGHWAY.

[2109] HE DOESN'T KNOW THE CROSS STREET. IT WAS A SERVICE STATION.

IT WAS NOT A MAJOR SERVICE STATION. IT WAS NOT ONE OF THOSE STANDARD ONES WHERE YOU

HAVE THE PUMP UP IN FRONT AND THE CASHIER'S BOOTH IN THE BACK.

IT WAS A SERVE YOURSELF AND DISCOUNT TYPE.

Q. DID YOU ASK HIM ANY QUESTIONS ABOUT THAT SERVICE STATION?

A. JUST IF HE KNEW WHAT KIND OF SERVICE STATION IT WAS.

Q. WHY WAS THAT IMPORTANT AT THAT POINT IN TIME?

A. IF IT WAS NECESSARY TO VERIFY ANY STATEMENTS OF HIS AT A FUTURE TIME.

Q. WAS THAT BECAUSE YOU FELT THAT YOU MIGHT HAVE TO VERIFY THAT TO SEE IF HE WAS TELLING THE TRUTH ABOUT WHERE HE WENT AFTERWARDS?

A. IT'S ALWAYS A POSSIBILITY.

Q. DID YOU THINK THAT AT THAT TIME?

A. I WASN'T ATTEMPTING TO ESTABLISH MR. STANSBURY WAS LYING TO ME AT THAT TIME.

Q. DID YOU BELIEVE HIS STATEMENT TO YOU AT THAT POINT IN TIME?

A. YES.

Q. NOW DID YOU ASK HIM - AT SOME POINT IN TIME YOU ASKED HIM ABOUT A VEHICLE OTHER THAN THE ICE CREAM TRUCK, ANOTHER KIND OF VEHICLE THAT HE MAY HAVE DRIVEN?

A. YES.

Q. WHAT DID YOU ASK HIM ABOUT THAT?

[2110] A. OTHER VEHICLES WERE DISCUSSED AT TWO POINTS, I BELIEVE, IN THE INTERVIEW. INITIALLY IN REFERENCE TO PEOPLE THAT HE LIVED WITH, ONE BEING HIS UNCLE.

WHEN HE MENTIONED HE HAD AN UNCLE, I ASKED FOR THE DESCRIPTION OF THAT VEHICLE.

AND NEAR THE END OF THE INTERVIEW IS WHEN I BECAME CURIOUS AS TO THE DESCRIPTION OF THE LUCAS VEHICLE WHICH IS THE ONE HE INDICATED HE BORROWED THAT PARTICULAR NIGHT IN QUESTION.

Q. HOW DID HE FIRST INDICATE THAT, THAT HE HAD DRIVEN ANY OTHER VEHICLE OTHER THAN THE ICE CREAM TRUCK?

A. HE TOLD ME WHEN HE HAD BEEN ASLEEP IN THE TRAILER AND LUCAS HAD RETURNED HOME, HE ASKED LUCAS IF HE COULD BORROW HIS CAR.

I NEVER MADE AN INQUIRY WHETHER HE WENT BACK OUT THAT EVENING.

Q. HE SAID HE HAD BORROWED LUCAS' CAR?

A. YES, TO GO GET SOMETHING TO EAT.

Q. NOW, WHEN YOU HEARD THAT, DID HE TELL YOU - HAD HE TOLD YOU ABOUT WHAT TIME HE BORROWED LUCAS' CAR TO GET SOMETHING TO EAT?

A. YES.

Q. DID HE TELL YOU THAT IN RESPONSE TO A QUESTION OF YOURS OR VOLUNTARILY?

A. HE VOLUNTEERED THAT - WELL, IT WAS SHORTLY AFTER LUCAS RETURNED HOME, AND HE TOLD ME THAT LUCAS RETURNED HOME AT ABOUT MIDNIGHT.

Q. AT THAT POINT IN TIME, DID YOU ASK MR. [2111] STANSBURY FOR A DESCRIPTION OF THE VEHICLE WHICH HE BORROWED AT MIDNIGHT ON THE 28TH?

A. NOT AT THAT TIME, NO.

Q. DID YOU EVER ASK HIM, MR. STANSBURY, FOR A DESCRIPTION OF THE LUCAS VEHICLE?

A. YES, SIR.

Q. WHEN DID THAT OCCUR?

A. AT THE END OF THE INTERVIEW.

Q. NOW, AT THE POINT YOU ASKED THAT QUESTION. WHY DID YOU ASK THE QUESTION THEN?

YOU KNEW HE HAD BORROWED A VEHICLE AT 12 O'CLOCK AT NIGHT.

DIDN'T YOU ALSO KNOW AT THE SAME TIME TIME THERE WAS A SUSPECT VEHICLE THAT HAD BEEN SEEN AFTER 12 O'CLOCK THAT NIGHT, 1:30 IN THE MORNING?

A. YES.

Q. DID YOU THINK THAT MIGHT BE THE SAME VEHICLE?

A. YES.

Q. YOU HAD A DESCRIPTION OF THE VEHICLE THAT WAS SEEN BY -

MR. BURNS: OBJECTION, YOUR HONOR. THE QUESTION IS VAGUE.

MR. DAUGHERTY: I HAVEN'T ASKED IT YET.

MR. BURNS: I WOULD - THANK YOU, COUNSEL.

I'M OBJECTING TO THE QUESTION BEFORE, WHICH MORE PROPERLY SHOULD BE A MOTION TO STRIKE THE ANSWER.

THE QUESTION BEFORE WAS WHEN YOU GOT THE DESCRIPTION, DID YOU THINK THE TWO MIGHT BE THE SAME? [2112] AND IT'S VAGUE AS TO POINT IN TIME, AS WHEN HE HEARD THE DEFENDANT DESCRIBE THE VEHICLE HE DROVE, DID HE BELIEVE IT MIGHT BE THE SAME, OR WHEN THE DEFENDANT SAID DID HE DRIVE ANY VEHICLE, DID HE SAY IT WOULD BE THE SAME.

IT WOULD BE AMBIGUOUS, AND I WOULD MOVE TO STRIKE THE ANSWER.

THE COURT: GRANTED.

WE'LL BE IN RECESS UNTIL 10:30 TOMORROW MORNING.

THANK YOU, SIR.

(AT 4:15 P.M., AN ADJOURNMENT WAS TAKEN UNTIL WEDNESDAY, OCTOBER 31, 1984, AT 10:30 A.M.)

[2113] THE COURT: MATTER OF PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, AND MR. STANSBURY ARE PRESENT.

I BELIEVE THAT MR. DAUGHERTY WAS CROSS EXAMINING OFFICER JOHNSTON, AS I RECALL.

THOMAS JOHNSTON, +

WITNESS, RESUMES STAND AND TESTIFIES FURTHER AS FOLLOWS:

MR. DAUGHERTY: YES.

JUST A MOMENT, YOUR HONOR.

(COUNSEL AND HIS CLIENT CONFER IN SOTTO VOCE.)

CROSS-EXAMINATION + (CONT'D)

BY MR. DAUGHERTY:

Q. LIEUTENANT JOHNSTON, AT ANY TIME PRIOR TO THE QUESTIONING OF MR. STANSBURY, WHICH STARTED ABOUT 11 O'CLOCK IN THE EVENING, DID YOU RECEIVE INFORMATION ABOUT HIS PAST RECORD?

A. NO.

Q. DID YOU AT ANY TIME DURING THE QUESTIONING PERIOD RECEIVE INFORMATION ABOUT MR. STANSBURY'S PAST RECORD?

A. OTHER THAN HIS RESPONSE TO MY QUESTION, NO.

Q. BEFORE. YOU AT SOME POINT IN TIME HAD [2114] INDICATED YOU ASKED HIM ABOUT HIS PAST RECORD?

A. THAT'S CORRECT.

Q. BEFORE THAT POINT IN TIME IN THE CONVERSATION, HAD ANYBODY TOLD YOU ANYTHING ABOUT HIS PAST RECORD?

A. NO.

Q. YOU INDICATED THAT AROUND 6 O'CLOCK, SOMEWHERE BETWEEN SIX OR SEVEN O'CLOCK IN THE EVENING YOU HAD RUN A RAP SHEET ON MR. STANSBURY?

A. I HAD IT RUN, YES.

Q. AND AT THAT POINT IN TIME HE WAS AT LEAST ONE OF THE POSSIBLE SUSPECTS IN THE CASE?

A. NO.

Q. HOW DID YOU VIEW HIM AT THAT TIME?

A. POSSIBLE WITNESS. SOMEBODY THAT HAD POSSIBLY BEEN PRESENT IN THE AREA ON THAT PREVIOUS DAY.

Q. DIDN'T YOU CONSIDER THAT HE MIGHT BE A POSSIBLE SUSPECT, BEING IN THE AREA, SIX OR SEVEN IN THE EVENING?

A. THE TERMINOLOGY, POSSIBLE SUSPECT, COULD INCLUDE ANY PERSONS THAT HAD BEEN

PRESENT IN THE AREA ON THE DAY IN QUESTION UP UNTIL THE TIME THAT WE HAD INTERVIEWED THEM.

Q. YES. I HAD ASKED YOU DID YOU AT THAT POINT IN TIME, MEANING SIX OR SEVEN IN THE EVENING, CONSIDER ONE OF THOSE ICE CREAM TRUCK DRIVERS MIGHT BE A SUSPECT IN THE CASE? AND DIDN'T YOU SAY, MIGHT BE A POSSIBLE, CERTAINLY?

A. CERTAINLY.

[2115] Q. DID ANYTHING HAPPEN ~~BETWEEN~~ SIX AND SEVEN AT NIGHT AND 11 O'CLOCK AT NIGHT TO ADD TO YOUR FEELINGS THAT MR. STANSBURY, PARTICULARLY, OR AN ICE CREAM TRUCK DRIVER PARTICULARLY MIGHT BE A SUSPECT?

A. NO.

Q. DID YOU RECEIVE ANY FURTHER INFORMATION THAT MIGHT INDICATE TO YOU THAT AN ICE CREAM TRUCK DRIVER WAS INVOLVED IN THE CRIME DURING THAT TIME FRAME?

A. NO.

Q. YOU INDICATED THAT YOU STARTED HAVING A CONVERSATION WITH MR. STANSBURY AND THAT HE TALKED TO YOU ABOUT WHAT HAPPENED THE MORNING OF THE 28TH WHEN HE STARTED HIS ROUTES, WHERE HE HAD BEEN EARLIER IN THE MORNING AND EVENTUALLY ENDING UP IN BALDWIN PARK.

A. YES.

Q. AND HE TOLD YOU ABOUT HIS ACTIVITIES UP UNTIL 6:30 IN THE EVENING?

A. AND BEYOND.

Q. ORIGINALLY UP UNTIL 6:30 IN THE EVENING?

A. I DON'T BELIEVE THAT THERE WAS ANY INTERRUPTION OF THE INTERVIEW AT SIX IN THE EVENING.

WHEN HE CAME TO THAT PART, THE BEHAVIOR AND HIS ACTIONS THROUGH THE DAY MORE OR LESS WAS CONTINUOUS.

Q. AT THE TIME FRAME WHERE HE HAD TOLD YOU ABOUT THE DAY UP UNTIL 6:30 IN THE EVENING, AT THAT POINT IN TIME, WAS THERE ANYTHING ABOUT THAT TESTIMONY THAT MADE YOU FEEL PERHAPS HE WAS MORE LIKELY TO BE A SUSPECT OR NOT?

[2116] A. NO.

Q. WHEN YOU FIRST SAW MR. STANSBURY AND OBSERVED HIS SIZE, WEIGHT AND SO FORTH, THAT HE WAS A BIG MAN, DID IT GO THROUGH YOUR MIND THAT THAT CORRELATED WITH THE FACT THAT THERE WAS A LARGE MAN SEEN DUMPING THE BODY?

A. NO. I CAN'T SAY THAT, NO.

Q. YOU INDICATED THAT YOU HAD ASKED MR. STANSBURY SOME DETAILS ABOUT HIS ROUTE

HOME, WHAT STREETS HE TOOK AND THE GAS STATION HE STOPPED AT.

A. YES.

Q. NOW, THAT WASN'T TO OBTAIN INFORMATION AS A POSSIBLE WITNESS, WAS IT?

A. IT IS MY NORMAL PROCEDURE WHEN INTERVIEWING ANYBODY TO ATTEMPT TO DETERMINE SPECIFIC INFORMATION WHICH AT A LATER DATE MIGHT BE VERIFIABLE OR WILL TEST THE PERSON'S ABILITY TO RECALL.

Q. WAS THERE ANYTHING ABOUT THOSE STATEMENTS, EITHER WHAT HAPPENED DURING THE DAY OR OF HIS ROUTE HOME OR STOPPING AT A GAS STATION, THAT YOU FELT PERHAPS WERE SOMEWHAT UNTRUSTWORTHY OR WHETHER YOU PERHAPS SHOULD INQUIRE INTO THOSE AREAS?

A. NO.

Q. AND AT THAT POINT IN TIME WHEN HE WAS TALKING ABOUT THAT DAY AND THAT EVENING UNTIL HE GOT HOME IN POMONA, YOU HADN'T CHANGED YOUR ATTITUDE ABOUT HIM AT ALL?

A. NO.

Q. THEN HE INDICATED TO YOU HE TOOK A VEHICLE OUT SOMEWHERE AROUND 12 O'CLOCK AT NIGHT?

[2117] A. YES.

Q. YOU KNEW AT THAT POINT IN TIME THAT SOMEBODY WAS SEEN DUMPING A BODY IN A PARTICULARLY DESCRIBED VEHICLE?

A. YES.

Q. AND YOU ASKED MR. STANSBURY TO DESCRIBE THE VEHICLE THAT HE WAS IN?

A. NOT AT THAT TIME.

Q. YOU DID ASK HIM THAT QUESTION?

A. YES, I DID.

Q. AT WHAT POINT IN TIME DID YOU ASK HIM THAT?

A. AT THE END OF THE INTERVIEW.

Q. AND AT THAT POINT IN TIME, WHAT HAD YOU DISCUSSED OTHER THAN HIS ACTIVITIES UNTIL 12 O'CLOCK AT NIGHT?

A. WELL, ALL OF HIS ACTIVITIES ON THE DAY IN QUESTION AND AFTER 12 O'CLOCK AT NIGHT.

EVERYTHING THAT IS A PORTION OF WHAT I TESTIFIED TO ON DIRECT WAS DISCUSSED PRIOR TO THE DESCRIPTION BEING GIVEN TO ME OF THE VEHICLE THAT HE ACTUALLY USED THAT NIGHT.

Q. WHAT DID HE SAY ABOUT THAT VEHICLE BEFORE YOU ASKED THAT QUESTION?

A. ONLY THAT HE BORROWED A ROOMMATE'S VEHICLE. LUCAS' VEHICLE, HE REFERRED TO IT.

Q. AT THAT POINT IN TIME YOU ASKED HIM?

A. NO.

Q. WHAT MORE DID HE SAY AFTER THAT, BEFORE YOU [2118] ASKED THE QUESTION?

A. AFTER THAT, HE IDENTIFIED THE PHOTOGRAPH OF ROBYN JACKSON; INDICATED THAT HE HAD SPOKEN TO HER WITH ANOTHER YOUNG BOY AND ANOTHER GIRL.

AND THAT HE THEN HAD PROCEEDED DOWN THE ROAD TO WHERE HE SOLD THE ICE CREAM TO THE FOUR MEXICAN CHILDREN, HIS ROUTE OF TRAVEL OVER TO MAIN STREET, BACK TO THE WEST SIDE OF THE GETTYS SCHOOL, HIS OBSERVATIONS OF THE OTHER ICE CREAM TRUCK, THE DRIVER OF THE OTHER ICE CREAM TRUCK.

THAT PROBABLY WAS THE INFORMATION AFTER HIM REFERRING TO HAVING GONE OUT IN LUCAS' CAR.

Q. HE WAS GOING BACK OVER SOME OF THE DAY IN MORE DETAIL?

A. YES.

Q. EARLIER PART OF THE DAY?

A. YES.

Q. WHAT - OKAY, HE COMPLETED THAT.

THEN YOU ASKED HIM FOR A DESCRIPTION OF THE VEHICLE HE BORROWED?

A. I ASKED HIM WHAT VEHICLES WERE AVAILABLE TO HIM, WHAT VEHICLES EITHER MR. EASTERDAY OR MR. PARKER MIGHT HAVE SOMEWHERE

DURING THAT, BECAUSE MR. EASTERDAY, I BELIEVE, IS HIS UNCLE. AND THEREFORE, TAKING ANOTHER VEHICLE, MORE THAN LIKELY I WOULD SUSPECT THAT HE WOULD USE HIS UNCLE'S VEHICLE.

SO I ASKED HIM THE DESCRIPTION REGARDING HIS UNCLE'S VEHICLE.

[2119] Q. AND HE HAD ALREADY TOLD YOU HE HAD BORROWED A CAR, AND IT WAS LOREN LUCAS' VEHICLE?

A. YES.

Q. YOU ASKED HIM WHAT OTHER VEHICLES HE HAD ACCESS TO?

A. YES.

Q. WHAT WAS THE PURPOSE IN ASKING THAT QUESTION?

WEREN'T - AT THAT POINT IN TIME WEREN'T YOU TRYING TO OBTAIN INFORMATION THAT MIGHT TEND TO INCRIMINATE HIM?

MR. BURNS: OBJECTION, YOUR HONOR.

THE QUESTION AS FORMED IS NOT RELEVANT.

THE ONLY RELEVANT QUESTION AT THIS POINT IN TIME IS WHETHER OR NOT THE INVESTIGATION OF HIM TO SUCH A POINT STANSBURY - OR THE NOTION IN THE MIND OF THIS OFFICER WAS IN FACT THE PRIME SUSPECT IN THIS CASE. AND THAT THE INVESTIGATION WAS ZEROING IN ON HIM.

AND AS THE QUESTION IS FRAMED, WHAT WAS GOING ON IN THAT OFFICER'S MIND, IF HE

ANSWERED YES OR NO TO THAT QUESTION, IT WOULD NOT BE RELEVANT TO THAT ISSUE.

MR. DAUGHERTY: I DON'T THINK THERE'S ANY REQUIREMENT THAT MR. STANSBURY HAD TO BE THE PRIME SUSPECT THAT DAY, IF HE WAS GOING TO ELICIT AN INCRIMINATING STATEMENT AT THAT TIME.

THE COURT: OVERRULED, YOU MAY ANSWER.

THE WITNESS: I'D LIKE THE QUESTION REPEATED, PLEASE.

[2120] BY MR. DAUGHERTY:

Q. WHEN YOU ASKED THE QUESTION TO DESCRIBE THE VEHICLE THAT HE ACTUALLY TOOK OUT THAT NIGHT AND GIVE A DESCRIPTION, AT THAT POINT IN TIME DID YOU FEEL THAT THAT DESCRIPTION OF THAT VEHICLE MIGHT MATCH THE VEHICLE THAT THE WITNESS HAD SEEN?

A. YES.

Q. AND THAT'S ATTEMPTING TO - THAT WOULD BE ATTEMPTING TO OBTAIN AN ADMISSION OF GUILT?

A. NO.

Q. DID YOU CONSIDER HIM AT THAT POINT IN TIME MORE OF A SUSPECT THAN YOU HAD EARLIER, SIR?

A. AT THE TIME I ASKED THE QUESTION?

Q. AT THE TIME YOU ASKED FOR A DESCRIPTION OF THE VEHICLE HE TOOK OUT AT MIDNIGHT.

A. NO. NO HE DIDN'T REALLY BECOME A SUSPECT AT THAT TIME.

IT WAS A QUESTION THAT HAD TO BE ASKED. IT WAS CERTAINLY AN IMPORTANT PIECE OF INFORMATION.

THE POSSIBILITY OR THE EXPECTATION OF A RESPONSE TO A SIMILAR VEHICLE WAS NOT NECESSARILY A POSITION I COULD BE IN.

Q. YOU INDICATED YOU FELT THAT HE MIGHT GIVE YOU A DESCRIPTION THAT MATCHED THAT SAME VEHICLE?

A. IT WAS POSSIBLE.

Q. THE EXPECTATION OF THAT?

A. IT WAS POSSIBLE.

Q. WELL, AT THAT POINT IN TIME, HADN'T YOUR [2121] QUESTIONING GONE BEYOND QUESTIONING A WITNESS ABOUT A CRIME HE MAY HAVE SEEN THAT AFTERNOON?

A. WELL, IT CERTAINLY WAS NOT IN THE AREA OF THE DISAPPEARANCE.

Q. OR WHAT HE MIGHT HAVE SEEN THAT AFTERNOON IN BALDWIN PARK?

A. YES.

Q. WEREN'T YOU IN FACT HONING IN ON HIM AS A SUSPECT AT THAT POINT IN TIME?

A. IT WAS STILL IN THE NATURE OF OBTAINING SUFFICIENT INFORMATION TO MAKE A DETERMINATION REGARDING HIS - ANY EXPECTATION OF HIS INVOLVEMENT OF THE CRIME.

Q. AT THAT POINT IN TIME YOU ASKED HIM FOR A DESCRIPTION. DID HE GIVE YOU ONE?

A. YES.

Q. DID YOU HAVE ANY INFORMATION AS TO WHAT LOREN LUCAS' VEHICLE LOOKED LIKE?

A. NO.

Q. WHAT DID HE TELL YOU AS FAR AS THE DESCRIPTION OF THE VEHICLE?

A. HE TOLD ME IT WAS A CHEVELLE, THAT IT WAS AN OLDER MODEL, PERHAPS AROUND A '70, AND THAT IT WAS TURQUOISE IN COLOR.

Q. DID THAT HAVE ANY SIGNIFICANCE TO YOU, THAT ANSWER?

A. YES.

Q. WHAT SIGNIFICANCE DID THAT HAVE?

A. THE VEHICLE, COLOR, THE FACT THAT IT WAS AN [2122] AMERICAN MADE AUTOMOBILE, AND THE FACT THAT IT WAS OLDER.

THOSE THREE SPECIFIC ITEMS OF DESCRIPTION CAUSED ME TO BELIEVE THAT IT MAY IN FACT BE THE SAME VEHICLE THAT WAS WITNESSED BY ANDY ZIMMERMAN.

Q. ANDY ZIMMERMAN INDICATED HE SAW SOMEBODY IN THAT VEHICLE DUMP THE DECEDENT'S BODY IN THIS CASE.

IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AT THAT POINT IN TIME WHEN YOU RECEIVED THAT INFORMATION, DIDN'T MR. STANSBURY BECOME A SUSPECT IN YOUR EYES THEN?

A. YES, SIR.

Q. NOW, WHAT DID YOU DO AFTER THAT, AFTER YOU HEARD THAT INFORMATION?

A. I ASKED HIM IF HE HAD HAD ANY PREVIOUS RECORD.

Q. DID YOU ADVISE HIM OF HIS RIGHTS AT THAT POINT?

A. NO, SIR.

Q. DID YOU ASK HIM ANY FURTHER QUESTIONS BESIDES DID YOU HAVE ANY PREVIOUS RECORD?

A. ONLY ONE OTHER.

Q. WHAT WAS THAT?

A. AND I'M NOT SURE WHETHER I ASKED THAT QUESTION.

IT WAS AN OFFER TO HAVE A POLYGRAPH EXAMINATION ADMINISTERED.

Q. AND THAT WAS DONE AFTER THE STATEMENT AFTER [2123] IT?

A. YES.

Q. AFTER THE QUESTION REGARDING HIS PAST RECORD?

A. YES.

Q. NOW HE MADE A STATEMENT TO YOU REGARDING THAT PAST RECORD?

A. YES.

Q. AND THEN RIGHT AFTER YOU HEARD THE STATEMENT HE MADE ABOUT HIS PAST RECORD, WHAT WAS THE NEXT STATEMENT OR NEXT QUESTION YOU ASKED?

A. IN ADDITION TO THE STATEMENT I TESTIFIED TO ON DIRECT YESTERDAY, HE SAID THAT HE HAD BEEN ARRESTED PREVIOUSLY IN POMONA FOR - BASED ON HIS PREVIOUS RECORD AT THAT TIME FOR A RAPE. AND THAT OBVIOUSLY THAT WAS WHAT WAS GOING TO HAPPEN AGAIN.

AND IT WAS IN RESPONSE TO THAT THAT HE WAS OFFERED A POLYGRAPH EXAMINATION.

Q. OKAY. AND SO YOU OFFERED A POLYGRAPH EXAMINATION?

A. I DON'T REMEMBER IF I DID THAT.

Q. DETECTIVE BELL?

A. NO. THE STATEMENT ABOUT HIS PAST RECORD WAS EITHER UPON MY - EITHER BEFORE I LEFT THE ROOM WITH DETECTIVE BELL OR EITHER UPON MY RETURN WITH SERGEANT PATTERSON AND DETECTIVE RIORDAN.

IT WAS A COMMENT BY HIM ABOUT HAVING BEEN ARRESTED BEFORE BECAUSE OF A PRIOR RAPE RECORD. AND THAT THIS OBVIOUSLY WHAT WAS HAPPENING TO HIM AGAIN.

[2124] AT THAT TIME, AGAIN HE WAS OFFERED A POLYGRAPH. AND I CAN'T TELL YOU JUST EXACTLY WHO DID THAT.

Q. DID YOU ASK HIM ANY FURTHER QUESTIONS AFTER THAT?

A. NO.

Q. THEN WAS HE ADVISED OF HIS RIGHTS?

A. YES. AFTER WE CHANGED, AFTER DETECTIVE BELL LEFT AND AGENT PATTERSON AND DETECTIVE RIORDAN CAME INTO THE INTERVIEW ROOM, DETECTIVE RIORDAN ADVISED HIM REGARDING HIS RIGHTS.

Q. AND HE INVOKED HIS RIGHTS AT THAT TIME AND INDICATED HE DID NOT WISH TO TALK?

A. WHEN HE WAS ASKED DID HE WANT AN ATTORNEY, HE RESPONDED, "I BELIEVE I NEED ONE."

Q. WHEN DID YOU ACTUALLY GET INFORMATION OTHER THAN FROM MR. STANSBURY REGARDING HIS PRIOR RECORD?

A. YOU MEAN PRIOR TO TALKING TO MR. STANSBURY?

Q. NO. SAY, THE 28TH, AT SOMETIME AFTER 12 O'CLOCK AT NIGHT - THE 29TH, YOU INDICATED

WHEN YOU COMMENCED THE INTERVIEW, YOU SAID YOU HAD NO INFORMATION.

ONCE MR. STANSBURY TOLD YOU ABOUT HIS PAST RECORD, DID YOU AT THAT POINT IN TIME RUN ANOTHER RAP SHEET?

A. I DON'T BELIEVE SO, NO.

Q. BEFORE HE MADE THAT STATEMENT TO YOU ABOUT HIS PAST RECORD, YOU HAD NO INFORMATION REGARDING HIS PAST RECORD.

[2125] IS THAT CORRECT?

A. THAT IS CORRECT.

Q. TO YOUR KNOWLEDGE, HAD ANY OF THE OTHER INVESTIGATORS GOTTEN KNOWLEDGE ABOUT THE RAP SHEET?

A. TO MY KNOWLEDGE, NONE OF THE INVESTIGATORS HAD ANY MORE KNOWLEDGE REGARDING MR. STANSBURY'S RECORD THAN I DID.

Q. DID YOU ON THAT DATE, SEPTEMBER 29TH, OR A FEW DAYS BEFORE, DID YOU PERSONALLY KNOW A DEPUTY WILLIE MILLER?

A. NO.

Q. FEMALE DEPUTY?

A. NO.

Q. DID YOU HAVE ANY CONVERSATION WITH WILLIE MILLER DURING THE INVESTIGATIONS OF THIS CASE UP UNTIL THE TIME MR. STANSBURY WAS ARRESTED?

A. NO.

Q. DID YOU HAVE ANY CONVERSATION WITH WILLIE MILLER AFTER HE WAS ARRESTED?

A. THIS MORNING.

Q. BEFORE THIS MORNING.

A. NO.

Q. DID YOU HAVE ANY CONVERSATION WITH ANY - I DON'T KNOW IF YOU CALL THEM INFORMATION OFFICERS.

A. PERSONNEL ASSIGNED TO THE SHERIFF'S INFORMATION BUREAU.

Q. YES.

A. NOT THAT I RECALL.

[2126] Q. WAS THERE ANY INFORMATION BEFORE MR. STANSBURY WAS ARRESTED?

A. BY MYSELF.

Q. WERE THERE ANY THAT - DID YOU CONTACT ANYBODY FROM THE INFORMATION BUREAU OF THE SHERIFF'S DEPARTMENT?

A. NO.

Q. AND GIVE THEM ANY INFORMATION?

A. NO.

Q. WHAT WAS YOUR CONVERSATION WITH WILLIE MILLER ABOUT THIS MORNING?

A. TO TELL HER WHY SHE WAS PRESENT THIS MORNING.

Q. I HAVE NOTHING FURTHER FROM THIS WITNESS.

REDIRECT EXAMINATION +
BY MR. BURNS:

Q. YOU INDICATED THAT PRIOR TO HAVING THIS INTERVIEW WITH MR. STANSBURY, THAT YOU HAD RECEIVED INFORMATION FROM SOMEONE BY THE NAME OF DONALD HELMER.

IS THAT CORRECT?

A. YES, SIR.

Q. AND DO YOU RECALL WHAT DONALD HELMER, WHAT HIS INFORMATION WAS TO YOU CONCERNING THIS CASE?

A. HIS INFORMATION WAS THAT HE HAD SEEN THE VICTIM AT ABOUT FIVE IN THE AFTERNOON IN THE AREA OF THE GETTY SCHOOL SPEAKING TO AN ICE CREAM MAN IN A BLUE ICE CREAM TRUCK. AND HE BELIEVED THAT THE OCCUPANT OF THE ICE [2127] CREAM TRUCK WAS A MALE NEGRO.

[2128] Q. ALL RIGHT.

SO THE INFORMATION ON - FROM DONALD HELMER IN NO WAY INDICATED ANYTHING CLOSE TO ANY FACTS RELATING TO MR. STANSBURY.

IS THAT CORRECT?

A. THAT'S CORRECT.

Q. AND THAT CONVERSATION THAT HE - DONALD HELMER INDICATED HE WITNESSED WAS

AT APPROXIMATELY 5:00 P.M. ON THE DAY IN QUESTION?

A. YES.

Q. HAD YOU PREVIOUSLY LEARNED FROM OTHER SOURCES SUCH AS THE VICTIM'S MOTHER THAT THE VICTIM WAS SEEN AFTER FIVE O'CLOCK IN OTHER ACTIVITIES LATER THAT DAY BEFORE HER DISAPPEARANCE?

A. YES.

Q. AND WITH REGARDS TO THE PERSON BY THE NAME OF JEREMY RAMOS, YOU INDICATED YOU HAD SOME INFORMATION CONCERNING HIS STATEMENT.

IS THAT CORRECT?

A. YES, SIR.

Q. AND DID JEREMY RAMOS INDICATE WHERE IT WAS HE SAW THE VICTIM THE LAST TIME HE SAW THE VICTIM?

A. YES.

Q. AND WHAT WAS THAT CIRCUMSTANCE, AS YOU RECALL?

A. HE SAW - OBSERVED ROBYN JACKSON AS SHE WALKED NORTH ON PHELAN STREET ON THE EAST SIDE OF THE SCHOOL, WHICH WOULD PUT HER ON THE WEST SIDEWALK.

[2129] AS SHE APPROACHED AN ICE CREAM TRUCK, IT WAS BLUE IN COLOR, AND HE BELIEVED

THAT THE DRIVER OF THE ICE CREAM TRUCK, THE BLUE ICE CREAM TRUCK, WAS A MALE NEGRO.

Q. HOW OLD WAS JEREMY RAMOS?

A. I DON'T REMEMBER.

Q. CAN YOU GIVE ME A BALLPARK FIGURE?

A. FIVE.

Q. IN ANY EVENT, MR. RAMOS WAS A YOUNG CHILD, IS THAT A FAIR STATEMENT?

A. YES.

Q. WAS THERE ANYTHING ABOUT MR. RAMOS' DEMEANOR THAT WOULD CAUSE YOU TO FEEL THE NEED TO CORROBORATE HIS STATEMENT BEFORE SAY ARRESTING ANYONE OR MAKING ANY DECISION TO ARREST ANYONE BASED ON YOUR CONTACT WITH HIM?

A. DEFINITELY.

Q. WAS HIS THE TYPE OF INFORMATION THAT YOU WOULD HAVE ON FACE VALUE CONSIDERED RELIABLE AT THAT POINT IN TIME.

A. NO.

Q. WITHOUT SOME CORROBORATION?

A. NO.

Q. DID MR. RAMOS IN FACT SUBSEQUENTLY CHANGE HIS TESTIMONY IN THIS CASE, TO YOUR KNOWLEDGE?

A. I BELIEVE THERE WAS A CHANGE IN TESTIMONY. I DON'T REMEMBER EXACTLY WHEN IT WAS, YES.

Q. AT ANY RATE, OFFICER, WHEN YOU WENT OUT TO POMONA TO TALK TO THESE PEOPLE, THE LATEST INFORMATION THAT YOU HAD OR THE INFORMATION YOU HAD CONCERNING WHO THE [2130] VICTIM MIGHT HAVE BEEN WITH WAS IN FACT A BLACK PERSON OPERATING A BLUE ICE CREAM TRUCK.

IS THAT RIGHT?

A. YES, SIR.

Q. NOW, WHAT WAS THE REASON OF GOING TO POMONA AT THAT TIME OF NIGHT TO TALK TO THE TWO PEOPLE THAT YOU WANTED TO TALK TO THAT NIGHT?

A. WELL, TIME IN AN INVESTIGATION OF THIS TYPE IS CRITICAL.

THE FACT THAT I HAD TWO RESIDENT'S ADDRESSES AND POSSIBILITY THAT THEY WOULD BE HOME AT THAT HOUR AND FOLLOWING ON THE NEED TO CONTACT ANYBODY AS A POTENTIAL WITNESS AS SOON AS POSSIBLE.

Q. OFFICER, AT THAT TIME, YOUR UNDERSTANDING WAS THAT THESE PEOPLE WERE SOMEHOW ENGAGED IN A SALE OF ICE CREAM OR SOMETHING FROM SORT OF A MOVING VEHICLE.

IS THAT RIGHT?

A. YES, SIR.

Q. WOULD YOU THEREFORE ON THAT INFORMATION THAT YOU HAD BEEN ABLE TO HAVE LOCATED THEM AT A BUSINESS ADDRESS?

A. NO.

Q. IN FACT, THEIR BUSINESS WOULD HAVE BEEN ONE THAT BY YOUR KNOWLEDGE WOULD HAVE BEEN IN CONSTANT CHANGING POSITION.

IS THAT RIGHT?

A. YES, SIR.

Q. SO THAT THE EASIEST WAY - LET ME ASK YOU:

[2131] WERE THERE ANY OTHER WAYS THAT YOU COULD THINK OF TO GET THEM OTHER THAN THEIR HOME ADDRESS?

A. NO.

Q. AND BOTH OF THESE PEOPLE LIVED IN THE SAME AREA OR SAME CITY, ROUGHLY THE SAME AREA?

A. YES, SIR.

Q. THIS YUSUF, WHAT RACE IS HE?

A. BLACK.

Q. AND HE WAS THE PERSON THAT YOU AND THE OTHER TWO HOMICIDE OFFICERS WENT TO FIRST.

IS THAT RIGHT?

A. YES, SIR.

Q. AND HOW WOULD YOU DESCRIBE YUSUF'S DEMEANOR, HIS COOPERATION, IF YOU WILL, WITH YOUR PRESENCE AT HIS APARTMENT, AT LEAST INITIALLY?

A. RATHER SUSPICIOUS.

Q. AND YUSUF WAS THEN BROUGHT DOWN BY YOU AND THE OTHER TWO HOMICIDE OFFICERS IN PERSON TO THE STATION.

IS THAT RIGHT?

A. TO POMONA POLICE DEPARTMENT, YES, SIR.

Q. HE WAS THE FIRST PERSON WHICH YOU WERE TALKING TO.

IS THAT RIGHT?

A. THAT'S CORRECT.

Q. IT WAS ONLY AT SOME POINT LATER THAT MR. STANSBURY WAS BROUGHT DOWN TO THE STATION.

IS THAT CORRECT?

A. YES, SIR.

[2132] Q. AND YOU INDICATED THAT YOU DIRECTED SERGEANT HIGGENBOTHAM TO REQUEST MR. STANSBURY TO COME DOWN.

IS THAT RIGHT?

A. YES.

Q. AND YOU INDICATED THAT MR. STANSBURY SHOULD BE ALLOWED TO DRIVE HIS OWN VEHICLE -

MR. DAUGHERTY: OBJECTION, LEADING.

MR. BURNS: STRIKE THAT I'LL REPHRASE THE QUESTION.

BY MR. BURNS:

Q. WHAT DID YOU INDICATE TO MR. HIGGENBOTHAM SHOULD BE THE MODE OF TRANSPORTATION, IF ANY?

A. WHATEVER WAS CONVENIENT TO MR. STANSBURY.

Q. DID YOU ANTICIPATE IN YOUR OWN MIND THAT THAT MIGHT IN FACT HAVE BEEN MR. STANSBURY DRIVING HIMSELF OR PROVIDING HIS OWN PERSONAL TRANSPORTATION DOWN THERE?

A. YES, SIR.

Q. SINCE WE'RE GETTING INTO THE AREA OF RELATIVES, AND THIS IS A HYPOTHETICAL, IF THE ONLY TWO PEOPLE THAT YOU HAD AT THAT POINT IN TIME FOR SUSPECTS WOULD HAVE BEEN MR. STANSBURY AND MR. YUSUF PRIOR TO INTERVIEWING EITHER OF THESE TWO PEOPLE BASED ON THE INFORMATION THAT YOU HAD, WOULD YOU BELIEVE THAT MR. YUSUF WOULD HAVE BEEN A BETTER SUSPECT?

MR. DAUGHERTY: OBJECTION; CALLS FOR SPECULATION.

MR. BURNS: THAT'S THE LINE OF QUESTIONING THAT DEFENSE COUNSEL WENT INTO AS FAR AS TO DETERMINE THE STATE OF MIND OF THE OFFICER AT THAT POINT IN TIME.

CLEARLY WHAT I'M ATTEMPTING TO ESTABLISH IS [2133] THAT BY WAY OF ALL OF THE EVIDENCE THAT THIS OFFICER HAD IN FRONT OF HIM, THERE WAS NOTHING THAT HE WOULD HAVE THAT WOULD SUGGEST THAT MR. STANSBURY WAS IN FACT INVOLVED IN THIS CRIME SAVE AND EXCEPT FOR THE SOLE PURPOSE THAT HE WAS IN FACT IN THE CITY OF BALDWIN PARK AND AT SOME POINT IN TIME HAD KNOWN THE VICTIM, THAT'S IT.

MR. DAUGHERTY: MAY I BE HEARD?

THE COURT: YES.

MR. DAUGHERTY: THE OFFICER'S STATE OF MIND I HAVE NO OBJECTION TO THAT. ALL I HAVE AN OBJECTION TO IS THERE'S NO PURPOSE TO HAVE HIM COMPLETELY SPECULATE AS FOR A HYPOTHETICAL THAT ISN'T FACTUAL.

HIS ACTUAL STATE OF MIND IN THIS CASE YES, I WOULD NOT OBJECT TO THIS QUESTION. BUT IT'S A HYPOTHETICAL AND HE'S ASKING HIM TO SPECULATE ON A SITUATION THAT DID NOT EXIST.

THE COURT: SUSTAINED.

BY MR. BURNS:

Q. OFFICER, WHAT IF ANYTHING DID YOU HAVE THAT WOULD IN ANY WAY SUSPECT OR INDICATE THAT MR. STANSBURY WOULD BE A POSSIBLE

SUSPECT IN THIS CASE AT THE TIME OR PRIOR TO YOUR ACTUAL CONVERSATION WITH MR. STANSBURY?

A. POSSIBLE SUSPECT, NOTHING.

Q. OTHER THAN THE FACT THAT HE WAS IN THE AREA?

A. YES.

Q. AND THAT HE AT SOME POINT KNEW THE VICTIM.

IS THAT RIGHT?

A. YES.

[2134] Q. THAT WOULD HOLD TRUE FOR ANYONE THAT WAS IN THE AREA FOR THAT POINT IN TIME.

IS THAT RIGHT?

A. THAT'S CORRECT.

Q. OR ANYONE THAT MIGHT HAVE KNOWN THE VICTIM AT ANY OTHER POINT IN TIME?

A. YES.

Q. CERTAINLY THE FOCUS OF INVESTIGATION HAD NOT DIRECTED ITSELF TO MR. STANSBURY PRIOR TO YOUR QUESTIONING OF HIM.

IS THAT CORRECT?

MR. DAUGHERTY: OBJECTION, LEADING.

THE COURT: EXCUSE ME.

THE COURT: READ THAT QUESTION BACK TO ME.

(THE LAST QUESTION WAS READ BACK.)

MR. BURNS: I'LL WITHDRAW AND REPHRASE THE QUESTION.

BY MR. BURNS:

Q. HAD THE FOCUS OF INVESTIGATION AT ANYTIME PRIOR TO YOUR INTERVIEW WITH MR. STANSBURY FOCUSED ON MR. STANSBURY?

A. NO.

Q. WAS HE IN ANY WAY CONSIDERED BY YOU TO BE THE PRIME SUSPECT IN THIS CASE?

A. NO.

Q. WAS HE IN ANY WAY BASED ON THE INFORMATION THAT YOU HAD AT THAT TIME IN YOUR MIND CONSIDERED A GOOD SUSPECT IN THIS CASE OR ANYTHING OF THE LIKE?

[2135] A. NO.

Q. THE ONLY POINT IN TIME IN WHICH - STRIKE THAT.

AT WHAT POINT IN TIME DURING THE CONVERSATION DID IT OCCUR TO YOU OR DID IT BECOME SUSPICIOUS TO YOU THAT HE MIGHT BE A SUSPECT IN THIS CASE?

A. WHEN HE DESCRIBED THE LUCAS VEHICLE.

Q. NOW, YOU INDICATED THAT AT SOME POINT DURING YOUR INITIAL QUESTIONING THE

DEFENDANT MADE KIND OF A GENERAL STATEMENT OF THE DAY'S ACTIVITIES.

IS THAT RIGHT?

A. THAT'S CORRECT.

Q. DID YOU ASK HIM SPECIFICALLY WHAT HE WAS DOING BETWEEN MIDNIGHT AND THREE O'CLOCK IN THE MORNING OR APPROXIMATELY OR AROUND ONE O'CLOCK IN THE MORNING?

A. NO.

Q. HOW DID THIS WHOLE AREA OF WHAT HIS CONDUCT WAS DURING THOSE MORNING HOURS COME UP? WHO BROUGHT IT UP?

A. HE VOLUNTEERED THAT HE WENT OUT SHORTLY AFTER MIDNIGHT.

Q. SO HE VOLUNTEERED THIS SUBJECT NOT ONLY THAT HE WENT OUT BUT HE VOLUNTEERED A TIME FRAME AS WELL?

A. EXCEPT FOR HIS RETURN TIME.

Q. AND WHEN HE VOLUNTEERED THAT TIME FRAME, WHAT DID YOU DO?

A. I ASKED HIM WHERE HE WENT.

Q. WAS THERE ANY PARTICULAR REASON TO ASK HIM [2136] WHY AT THAT POINT?

A. I FELT IT WAS A LITTLE UNUSUAL FOR SOMEBODY TO GO OUT AT MIDNIGHT.

Q. WAS THAT JUST FOLLOWING THE GENERAL COURSE OF CONVERSATION AT THAT POINT?

A. YES.

Q. NOT ATTEMPTING AT THAT POINT IN TIME TO DEVELOP ANYTHING INCRIMINATING.

MR. DAUGHERTY: OBJECTION, LEADING.

THE COURT: SUSTAINED.

BY MR. BURNS:

Q. WAS THAT IN ANY PART AN EFFORT TO DEVELOP ANYTHING INCRIMINATING AT THAT TIME?

A. NO.

Q. AND AT THAT POINT IN TIME, DID YOU ASK HIM TO DESCRIBE THE VEHICLE THAT HE WAS IN?

A. NO.

Q. AT THAT POINT IN TIME, IS THAT WHEN YOU SHOWED HIM THE PHOTOGRAPH?

A. YES.

Q. ASKED HIM QUESTIONS ABOUT THAT VICTIM?

A. HE VOLUNTEERED THAT HE RECOGNIZED HER AND THAT HE HAD SEEN HER.

Q. ASKED HER QUESTIONS ABOUT WHEN HE HAD LAST SEEN HER, WHAT THE CIRCUMSTANCE WERE OF HIS LAST SIGHTING OF HER?

A. YES.

Q. DID YOU ALSO ASK HIM QUESTIONS ABOUT WHETHER [2137] OR NOT HE HAD SEEN ANYONE

ELSE IN AND AROUND THE AREA OF THE TIME OF HIS LAST SIGHTING OF THE VICTIM?

A. YES.

Q. AND DID HE INDICATE SOMEONE?

A. YES.

Q. DID YOU ASK HIM TO DESCRIBE WHO THAT PERSON WAS?

A. I DID.

Q. WHAT WAS THE REASON FOR ASKING HIM TO DESCRIBE THIS OTHER PERSON IN AND AROUND THAT AREA?

A. FOR THE PURPOSES OF IDENTIFYING AND BEING ABLE TO CONTACT THAT OTHER PERSON.

Q. FURTHER INVESTIGATION AS TO POSSIBLE WITNESSES?

A. THAT'S CORRECT.

Q. AFTER HE MADE HIS STATEMENT CONCERNING THE TYPE OF CAR THAT HE WAS DRIVING THAT NIGHT, THE ONLY OTHER AREA THAT WAS INQUIRED ON WAS AS TO HIS PRIOR BACKGROUND?

A. YES, SIR.

Q. AT THAT POINT AFTER HE MADE HIS STATEMENT AS TO HIS RECORD, YOU AND DETECTIVE BELL THEN LEFT HIM ALONE IN THE INTERVIEW ROOM?

A. YES.

Q. THEN RETURNED WITH - AT THAT POINT, DID YOU GO AND GET THE OTHER HOMICIDE OFFICERS? OR HAD THEM BROUGHT TO YOU?

A. YES.

I DIDN'T LEAVE THE IMMEDIATE AREA.

[2138] Q. AT ANY RATE, YOU SENT FOR THE OTHER INVESTIGATING OFFICERS.

IS THAT RIGHT?

A. UNLESS THEY WERE ALREADY THERE BECAUSE OF CONCLUSION OF THEIR INTERVIEW, I DON'T RECALL.

Q. WHEN YOU WENT BACK INTO THE INTERVIEW ROOM WITH MR. STANSBURY, WAS DETECTIVE BELL PRESENT?

A. NO.

Q. WHAT WAS THE REASON FOR HAVING DETECTIVE BELL WITH YOU DURING THE FIRST PART?

A. JUST TO HAVE AN OBSERVER.

Q. SHE WAS NOT AN INVESTIGATOR WORKING ON THE CASE, WAS SHE?

A. NO.

Q. WHEN YOU WENT BACK TO INTERVIEW MR. STANSBURY, YOU CHANGED THE INVESTIGATION TEAM OR THE TEAM OF OFFICERS THAT WERE TALKING TO HIM?

A. YES.

Q. AND YOU BROUGHT IN THE OTHER TWO HOMICIDE OFFICERS?

A. YES, SIR.

Q. WHY?

A. BECAUSE AT THAT POINT IN TIME IT WAS GOING TO BE AN INTERROGATION OF THE SUSPECT.

Q. AT THAT POINT IN TIME, IT WOULD BE IN YOUR MIND OR IN YOUR MIND AT THAT POINT IN TIME, THE FOCUS ON MR. STANSBURY HAD BEEN FIXED.

IS THAT RIGHT?

[2139] A. YES.

Q. AND WHEN YOU BROUGHT THOSE TWO OTHER OFFICERS IN, DID YOU ADVISE MR. STANSBURY OF HIS RIGHTS PRIOR TO ANY QUESTIONING OR WAS THAT DONE BY SOMEONE?

A. THAT WAS DONE BY DEPUTY RIORDAN.

Q. AT THAT POINT, HE MADE HIS RESPONSE TO YOU?

A. YES, SIR.

Q. YOU INTERPRETED THAT RESPONSE AS AN INVOCATION OF HIS MIRANDA RIGHTS?

A. YES, SIR.

Q. AND THE ONLY OTHER AREA THAT WAS DISCUSSED AT THAT POINT WAS SOME DISCUSSION

ABOUT THE TAKING OF A POLYGRAPH TEST OR SOMETHING?

A. I JUST KNOW THAT DISCUSSION CAME UP. WHETHER IT WAS JUST BEFORE I LEFT WITH OFFICER BELL OR IMMEDIATELY UPON MY RETURN WITH THE TWO HOMICIDE INVESTIGATORS, I DON'T SPECIFICALLY RECALL.

Q. AT ANY RATE, NO FURTHER QUESTIONS WERE CONDUCTED CONCERNING THIS CASE OR THE FACTS INVOLVED IN THIS CASE?

A. THAT'S RIGHT. THAT'S CORRECT.

MR. BURNS: I HAVE NO FURTHER QUESTIONS.

THE COURT: MR. DAUGHERTY?

MR. DAUGHERTY: YES.

RECROSS-EXAMINATION +
BY MR. DAUGHERTY:

Q. YOU KNEW WHEN YOU FIRST SAW MR. STANSBURY [2140] THAT HE AT LEAST MATCHED THE PHYSICAL SIZE, DESCRIPTION OF THE ONLY SUSPECT YOU HAD, THE PERSON WHO HAD DUMPED THE BODY IN THE WASH.

IS THAT CORRECT?

A. AND THAT HE WAS TALL, YES.

Q. AND LARGE?

A. YES.

Q. YOU ALSO TALKED TO A YOUNG BOY NAMED HASTINGS, RANDY HASTINGS THAT SAME DAY?

A. I REMEMBER THE NAME BUT I DON'T KNOW - I DON'T RECALL THAT I SPECIFICALLY SPOKE TO HIM.

Q. AND DIDN'T HE IN FACT TELL YOU THAT THE ICE CREAM MAN HAD BEEN GIVING ROBYN FREE CANDY AND TALKING TO HER ALL THE TIME?

A. YES.

Q. THAT WAS THE INFORMATION YOU HAD?

A. YES.

Q. DIDN'T THAT TRIGGER IN YOUR MIND THAT THE ICE CREAM TRUCK MAN MIGHT BE INVOLVED IN THIS?

A. MIGHT BE INVOLVED, YES.

Q. DID JEREMY RAMOS TELL YOU THE ICE CREAM TRUCK DRIVER'S NAME WAS BOB?

A. THE ONE THAT ROBYN HAD SPOKEN TO EARLIER IN THE DAY HE DESCRIBED HIM.

I DON'T REALLY RECALL IF HE SAID BOB. I REALLY DON'T.

MR. DAUGHERTY: JUST A MOMENT, YOUR HONOR.

THE COURT: WE'RE OFF THE RECORD.

[2141] (THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

BY MR. DAUGHERTY:

Q. DID YOU CONSIDER IT SIGNIFICANT THAT SEVERAL PEOPLE TOLD YOU THE LAST PERSON THAT ROBYN HAD SEEN BEFORE SHE WAS MISSING WAS AN ICE CREAM TRUCK DRIVER?

A. YES.

Q. DID YOU CONSIDER AN ICE CREAM TRUCK DRIVER MAY HAVE BEEN A PERSON WHO ABDUCTED HER?

A. YES.

Q. YOU KNEW SHE WAS ABDUCTED BY SOMEBODY THAT AFTERNOON?

A. YES.

Q. 6:30 IN THE AFTERNOON OR SO.

MR. DAUGHERTY: I HAVE NOTHING FURTHER.

REDIRECT EXAMINATION +

BY MR. BURNS:

Q. WAS IT IMPORTANT TO YOU THAT SHE HAD CONTACT WITH AN ICE CREAM TRUCK MAN TO DETERMINE WHETHER THAT PERSON WAS A VICTIM OR - EXCUSE ME WAS A WITNESS OR SUSPECT?

A. CERTAINLY.

MR. BURNS: MAY I APPROACH THE WITNESS, YOUR HONOR?

THE COURT: YES.

BY MR. BURNS:

Q. OFFICER, SHOWING YOU A COPY OF A BALDWIN PARK POLICE DEPARTMENT REPORT FOR COUNSEL'S BENEFIT, OFFICER HAMMOND'S REPORT PAGE TWO OF THREE, I BELIEVE THE DATE OF [2142] THE TIME OF THE REPORT IS 9/29/82.

OFFICER, HAD YOU BEEN GIVEN A COPY OF THAT PARTICULAR REPORT, SPECIFICALLY THAT PAGE SETTING OUT RANDY HASTING'S STATEMENT PRIOR TO INTERVIEW WITH DETECTIVE OR - EXCUSE ME - WITH MR. STANSBURY?

A. I DON'T BELIEVE SO.

Q. AND HAD YOU ACTUALLY PERSONALLY TALKED TO MR. HASTINGS BEFORE THAT INTERVIEW WITH MR. STANSBURY?

A. NOT TO MY RECOLLECTION.

MR. BURNS: THANK YOU.

I HAVE NO FURTHER QUESTIONS.

MR. DAUGHERTY: NOTHING FURTHER AT THIS TIME.

THE COURT: ALL RIGHT.

1:30, GENTLEMEN.

I HAVE A COUPLE OF QUESTIONS. I'LL ASK THEM AT 1:30.

DEFENDANT STANSBURY: YOUR HONOR, AT THIS TIME -

THE COURT: 1:45.

1:45.

DEFENDANT STANSBURY: YOUR HONOR, AT THIS TIME I WOULD LIKE TO BRING IT TO THE ATTENTION OF THE COURT AND HAVE IT PLACED ON THE RECORD THIS MORNING I HAVE BEEN HANDED A NUMBER OF PHOTOGRAPHS BY MR. DAUGHERTY.

THESE ARE ALLEGEDLY THE PHOTOGRAPHS FROM THE PASADENA POLICE DEPARTMENT. I BELIEVE MR. BURNS SPECIFIED ON OCTOBER THE 3RD THAT THERE WERE ALMOST 100 PHOTOGRAPHS.

THE AMOUNT HERE, WHICH I HAVE COUNTED THREE SEPARATE TIMES, IS A TOTAL OF 54.

[2143] THEREFORE, THERE ARE STILL NUMEROUS PHOTOGRAPHS MISSING, RELATING TO THOSE AREAS. WHERE THE OTHER PHOTOGRAPHS ARE I DO NOT KNOW AT THIS TIME.

MR. DAUGHERTY UPON MY ASKING FOR THE REST OF THE PHOTOGRAPHS SPECIFIED THIS WAS ALL THAT WAS HANDED TO HIM BY MR. BENART.

THE COURT: MR. DAUGHERTY, WOULD YOU BE KIND ENOUGH TO INQUIRE OF MR. BENART IF HE KNOWS OF ANY OTHER PHOTOGRAPHS, FOR THE BENEFIT OF YOUR CLIENT?

MR. DAUGHERTY: IF THEY EXIST.

THE COURT: I'M SORRY, FOR THE BENEFIT OF CO-COUNSEL.

MR. DAUGHERTY: YES.

THE COURT: 1:45, GENTLEMEN.

(AT 11:55 A.M., A RECESS WAS TAKEN UNTIL
1:30 P.M. OF THE SAME DAY.)

[2144] POMONA, CALIFORNIA; WEDNESDAY, 10-31-84;
* 2:25 P.M. DEPT. EAST H HON. JAMES H. PIATT,
JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

THE COURT: IN THE MATTER OF PEOPLE
VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR.
BURNS, MR. ROBUSTO, MR. DAUGHERTY AND MR.
STANSBURY ARE PRESENT.

MR. DAUGHERTY: YES.

THE COURT: MR. DAUGHERTY?

MR. DAUGHERTY: BEFORE WE CONTINUE
WITH THE EXAMINATION OF THIS WITNESS, AN
ISSUE WAS RAISED JUST PRIOR TO THE BREAK BY
MR. STANSBURY REGARDING THE PHOTOGRAPHS
FROM THE PASADENA POLICE DEPARTMENT.

I TALKED TO MR. BENART, AND HE INDICATED
HE HAS OBTAINED ALL PHOTOGRAPHS FROM THE
PASADENA POLICE DEPARTMENT, NUMBERING 54
PHOTOGRAPHS.

MR. BURNS HAS IN EXCESS OF THAT NUMBER.

WE HAVE LOOKED AT MR. BURNS' PHOTO-
GRAPHS. THERE ARE A LARGE NUMBER OF DUPLI-
CATES HE RECEIVED FROM THE PASADENA POLICE
DEPARTMENT.

I WOULD SUGGEST THAT AT THE BREAK, IF MR.
STANSBURY COULD COMPARE HIS PHOTOGRAPHS
WITH MR. BURNS' PHOTOGRAPHS, WE CAN DETER-
MINE AT THAT TIME IF THERE ARE ANY THAT ARE
MISSING, IF THAT'S AMENABLE.

MR. BURNS: I HAVE NO OBJECTION.

WHAT I INDICATED TO COUNSEL, I PULLED THE
PHOTOGRAPHS BEFORE THAT I PREVIOUSLY IDENTI-
FIED FOR THE [2145] RECORD, AND IT SHOWS THAT
THERE ARE A TOTAL OF 94 PHOTOGRAPHS FROM
PASADENA POLICE DEPARTMENT, FIVE OF WHICH
ARE BLANK.

SO THERE ARE ACTUALLY ONLY 89 TRUE PHO-
TOGRAPHS.

MY EXAMINATION OF THE PHOTOGRAPHS,
GOING THROUGH THE FIRST TWENTY, INDICATED
APPROXIMATELY SEVEN OR EIGHT OF THOSE WERE
DUPLICATED SHOTS THAT WERE REPRINTED TWICE.

I HAVE NO IDEA WHAT HE HAS BEEN HANDED.

I HAVE NO OBJECTION TO A REVIEW TO SEE IF
THEY ARE THE SAME.

I WOULD LIKE TO FINISH THE EXAMINATION OF
THIS WITNESS, IF WE COULD AT THIS TIME.

MR. DAUGHERTY: IF THE COURT TAKES A BREAK IN THE AFTERNOON, WE COULD EXAMINE THEM.

AND I HAD NO FURTHER QUESTIONS OF THIS WITNESS.

THE COURT: AND I BELIEVE YOU HAD NO FURTHER QUESTIONS.

MR. BURNS: THAT'S CORRECT, YOUR HONOR.

THOMAS JOHNSTON, +
WITNESS, RESUMES STAND AND TESTIFIES FURTHER AS FOLLOWS:

THE COURT: OFFICER, I'M TRYING TO RECONCILE. MAYBE I MISUNDERSTOOD SOME OF THE TESTIMONY YESTERDAY.

AND I'M NOW REFERRING TO PAGE 2091, AND I'M [2146] GOING TO HAND IT AT THIS TIME TO YOU AND HAVE YOU TAKE A LOOK AT IT, AND ASK - THERE'S A REFERENCE AT LINE 5 ABOUT A CONVERSATION WITH, I BELIEVE SHARON SANCHEZ, REGARDING INFORMATION THAT WAS GIVEN TO HER BY JEREMY RAMOS.

IN FACT, WHAT I WOULD LIKE TO HAVE YOU DO IS TAKE A FEW MOMENTS AND JUST READ THIS, THE TRANSCRIPT FROM PAGE 2088 TO 2091, ROUGHLY DOWN THERE WHERE I'VE MADE THAT MARK.

OKAY, AND TELL ME IF YOU FIND ANY - I'LL ASK SOME QUESTIONS AFTER YOU'VE DONE THAT?

THE WITNESS: ALL RIGHT, SIR.

THE COURT: ALL RIGHT, SIR.

MR. BURNS: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES, YOU MAY.

(PAUSE.)

THE WITNESS: ALL RIGHT, SIR.

THE COURT: DID YOU READ THROUGH THE BOTTOM OF 2091?

THE WITNESS: I WENT TO THE MARK.

THE COURT: I'M SORRY. READ DOWN TO THE BOTTOM OF THE PAGE 2091, PLEASE.

THE WITNESS: ALL RIGHT, SIR.

THE COURT: HAVE YOU HAD AN OPPORTUNITY, GENTLEMEN, TO READ THIS?

MR. DAUGHERTY: YES.

MR. BURNS: YES, I HAVE.

THE COURT: OFFICER, I READ THIS TESTIMONY OR YESTERDAY'S TRANSCRIPT IN LIGHT OF SOME OF THE TESTIMONY [2147] TODAY. AND I'M NOT SURE THAT THERE IS A CONFLICT IN THE TESTIMONY OR NOT.

OKAY. SO MY ORIGINAL - MY FIRST QUESTION IS, YOU HAD THIS MEETING, YOUR FIRST MEETING WITH MR. STANSBURY AT ABOUT 11:00 P.M. ON THE 29TH.

IS THAT CORRECT?

THE WITNESS: THAT'S CORRECT.

Q. HAD YOU DISCUSSED WITH ANYBODY ELSE PRIOR TO THAT TIME THE FACT THAT A MAN WHO WAS TALL, HEAVY AND HAD RED HAIR AND A BUSHY BEARD MAY HAVE SEEN THE GIRL?

THE WITNESS: WE HAD INFORMATION FROM, HEARSAY INFORMATION FROM MRS. SANCHEZ AND JEREMY RAMOS WHO SAID HE HAD BEEN IN THE COMPANY WITH ROBYN WHEN ROBYN HAD SPOKEN TO THE ICE CREAM MAN WITH THAT DESCRIPTION.

THE COURT: BUT THE INFORMATION YOU GOT FROM MRS. SANCHEZ WAS INFORMATION SHE GOT FROM -

THE WITNESS: JEREMY RAMOS.

THE COURT: RAMOS, IS THAT CORRECT?

THE WITNESS: THAT'S CORRECT.

THE COURT: YOU TALKED TO MRS. SANCHEZ SOMETIME BEFORE 11:00 P.M. ON ON THAT DAY?

THE WITNESS: YES.

THE COURT: DID SHE RELATE THAT INFORMATION TO YOU AT THAT TIME OR SOME OTHER TIME?

THE WITNESS: NO. SHE RELATED THAT INFORMATION AT THAT TIME.

WE SPOKE TO JEREMY RAMOS THAT DAY FOLLOWING THAT INFORMATION.

[2148] THE COURT: YOU MEAN ON THE 30TH?

THE WITNESS: NO, ON THE 29TH.

THE COURT: AND DID JEREMY RAMOS TELL YOU WHEN HE THOUGHT IT WAS THAT HE HAD SEEN ROBYN WITH THIS INDIVIDUAL WITH THE RED HAIR AND A BUSHY BEARD?

THE WITNESS: YES.

THE COURT: WHEN DID HE SAY THAT?

THE WITNESS: THAT WAS BEFORE DINNER.

THE COURT: DID HE SAY APPROXIMATELY WHAT TIME?

THE WITNESS: HE JUST INDICATED IT WAS JUST BEFORE THEY ALL WENT IN TO DINNER.

THEY ALL EAT DINNER TOGETHER. HE ATE DINNER AT ROBYN JACKSON'S HOUSE.

THE COURT: I SEE.

WHAT INFORMATION DID YOU HAVE THEN, IF YOU HAD ANY, ABOUT WHO ROBYN JACKSON MIGHT HAVE SEEN AFTER DINNER?

THE WITNESS: WE HAD TWO SOURCES OF INFORMATION REGARDING WHO ROBYN MAY HAVE BEEN SEEN WITH AFTER DINNER.

AND ONE WAS JEREMY RAMOS IN HIS STATEMENT TO US WHICH INDICATED THAT HE

WATCHED ROBYN GO UP PHELAN AND APPROACH AN INDIVIDUAL IN A BLUE ICE CREAM TRUCK. AND IT WAS OCCUPIED BY A MALE NEGRO.

AND THEN MR. HELMER INDICATED THAT HE SAW ROBYN JACKSON SPEAKING TO SOMEONE IN A BLUE ICE CREAM TRUCK.

IT WAS A MALE NEGRO, ONLY HIS REFERENCE POINT IN TIME WAS 5:00 P.M.

[2149] AND I DON'T KNOW HOW HE ESTABLISHED THE TIME.

THE COURT: ON THE 29TH WHEN YOU TALKED TO MR. STANSBURY, WAS THERE ANYBODY WHO HAD SUGGESTED THAT SHE MIGHT, ROBYN MIGHT HAVE MET A CAUCASIAN WITH RED HAIR AND A BUSHY BEARD AFTER DINNER?

THE WITNESS: THE ONLY REFERENCE TO HER HAVING MET HIM AFTER DINNER WAS BASED ON THE INFORMATION WE RECEIVED FROM MRS. SANCHEZ, WHICH WAS A STATEMENT OF INFORMATION SHE HAD FROM JEREMY RAMOS.

WE SPOKE TO JEREMY RAMOS AFTER THAT?

THE COURT: AND RAMOS PLACED THAT MEETING BEFORE DINNER?

THE WITNESS: YES.

THE COURT: I SEE.

HOW OLD WAS JEREMY AT THE TIME?

THE WITNESS: FOUR. HE WAS FOUR AT THE TIME.

THE COURT: I HAVE NOTHING FURTHER.

RECROSS-EXAMINATION +

BY MR. DAUGHERTY:

Q. YOU INDICATED YOU ALSO TALKED TO QUITE A FEW OF THE NEIGHBORS THAT DAY?

A. YES.

Q. WERE THERE ANY OTHER NEIGHBORS THAT YOU TALKED TO WHO HAD ALSO SEEN ROBYN WITH AN ICE CREAM TRUCK DRIVER LATER IN THE AFTERNOON OR EARLY EVENING?

A. I DON'T RECALL ANY OTHER PEOPLE SPECIFICALLY THAT SAW HER WITH ANYBODY THAT PARTICULAR DAY.

[2150] Q. DID YOU TALK TO THE BEACHES THAT DAY, NANCY AND CATHY BEACH?

A. I DON'T EVEN RECOGNIZE THE NAME.

Q. DO YOU HAVE - DID YOU PREPARE NOTES OF YOUR INTERVIEWS?

A. I HAVE A NOTEBOOK, YES.

Q. HAVE YOU HAD A CHANCE TO INTERVIEW THOSE NOTES AT ALL?

A. NOT SPECIFIC TO THAT INTERVIEW.

Q. IF YOU RECALL THE NOTES, COULD YOU TELL FROM THOSE NOTES -

A. WHO I SPOKE TO?

Q. THE DAY OF THE 28TH.

A. 29TH, YES.

Q. CAN YOU REVIEW THOSE NOTES AND TELL US YOUR BEST RECOLLECTION OF THAT?

A. WOULD YOU REPEAT THE LAST NAME OF THE PEOPLE AGAIN.

Q. IN REVIEW OF YOUR NOTES, CAN YOU TELL US NOW SOME OF THE OTHER PEOPLE YOU TALKED TO THAT DAY?

A. YES.

Q. WHO ELSE DID YOU TALK TO?

A. THERE WAS A DONALD HELMER, TAKEN AT 1605 HOURS, WHICH IS 4:00 P.M.

BRIEFLY, HE SAW ROBYN BETWEEN 5 AND 6:00 P.M. TALKING TO A MAN IN A LIGHT BLUE STEP VAN ICE CREAM TRUCK DESCRIBED AS A MALE NEGRO, APPROXIMATELY 24 YEARS OF AGE, 5 FOOT 8, MUSTACHE, NEEDED A SHAVE.

[2151] FELT THE TRUCK WAS POSSIBLY FROM PASADENA.

SPOKE, OF COURSE, TO MRS. SANCHEZ.

PIERTRINA SCOPAZZI.

SPOKE TO A DENISE ACLES. I DON'T HAVE THE TIME ON THIS.

Q. WHEN YOU TALKED TO MISS SCOPAZZI -

A. YES.

Q. MISS SCOPAZZI MENTIONED TO YOU ABOUT AN ICE CREAM TRUCK DRIVER WITH RED HAIR AND A RED BEARD, DID SHE NOT?

A. SHE MENTIONED THAT JERRY RAMOS WAS WITH THE VICTIM WHEN SHE SPOKE TO AN ICE CREAM MAN.

I DON'T HAVE IN MY NOTES THAT SHE DESCRIBED THE ICE CREAM MAN.

DO YOU WANT ANY OTHER NAMES OF PERSONS I SPOKE TO?

Q. YES, PLEASE.

A. MR. BILL STOKES, WHO IS THE CLINICAL SUPERVISOR OF THIS - I GUESS IT'S A TRANSITION HOUSE FOR THE MENTALLY ILL RIGHT THERE ON PHELAN, JUST NORTH OF THE VICTIM'S RESIDENCE.

THEY HAD AN INDIVIDUAL THAT HE FELT WAS SUSPICIOUS BECAUSE HE WAS NEW TO THE AREA.

IT TURNED OUT HE WAS A RECENT EMPLOYEE OF A HOSPITAL THAT SERVICES THIS MENTAL HALFWAY HOUSE, AND THAT HE HAD BEEN IN THE AREA THE DAY BEFORE, BUT TO VISIT WITH ONE OF THE PATIENTS THERE.

WOODY CURRY, WHO I HAVE INDICATED WHO ONLY [2152] BEING A RESIDENT AT THAT HOUSE. I DIDN'T GET ANY USEFUL STATEMENT FROM HIM.

DENISE ACLES, ALREADY MENTIONED.

SHE JUST SAW THE VICTIM AT AN UNKNOWN TIME IN THE AFTERNOON WITH ANOTHER FEMALE COMPANION. NOTHING FURTHER.

WENT TO A NUMBER OF RESIDENTS. THERE WAS NOBODY AT HOME.

SPOKE TO A CHRISTINA RUBIO, 10:30 IN THE MORNING.

AND SHE SAID THERE WAS A SUSPICIOUS VEHICLE IN THE NEIGHBORHOOD, DARK GREEN, TWO-DOOR WITH BLACK TOP, CONTAINING MALE MEXICAN, 5 FOOT 3, 5 FOOT 4. SHE SAID IT WAS AT THE PEDESTRIAN GATE AT THE SCHOOLYARD ON PHELAN. TALKED TO A CARL STOHL, RESIDENT THERE. HE HAD NO INFORMATION.

TOM GILBERT, I DON'T HAVE THE TIME ON THAT. PROBABLY IN THE MORNING HOURS.

NOTED THERE WAS A BROWN SEDAN THAT HAD BEEN IN FRONT OF THE SCHOOL, APPROXIMATELY 7:00 P.M., THE PREVIOUS DAY.

NO FURTHER INFORMATION.

SPOKE TO A 15 YEAR OLD ROQUE CARDENAS. APPARENTLY I SPOKE TO HIS FATHER WHO RELATED THAT HIS SON HAD BEEN PLAYING BASEBALL IN THE SCHOOLYARD THE PREVIOUS AFTERNOON.

HE MAY HAVE SEEN SOMETHING. I HAVE NOTHING FURTHER ON THAT.

[2153] ALICE VALDEZ, WHO INTRODUCED US OR ME TO THE GRANDDAUGHTER, LORETTA SABALA, 6 YEARS OLD.

HADN'T SEEN ANYTHING EXCEPT AN OLDER MAN PLAYING ON THE SCHOOL FIELD EVERY NIGHT. REFERRING TO WHAT I THINK WE ESTABLISHED LATER AS A GROUP THAT GET TOGETHER TO PLAY SOFTBALL.

JOHN BAKSYS AND HIS MOTHER. THEY DIDN'T GIVE ME ANY INFORMATION.

THAT'S ALL I HAVE IN MY NOTEBOOK REGARDING CONVERSATIONS WITH PERSONS IN THE NEIGHBORHOOD ON THAT PARTICULAR DAY.

Q. WHEN YOU TALKED TO PIETRINA SCOPAZZI, SHE TOLD YOU SOMETHING ABOUT AN ICE CREAM TRUCK DRIVER.

IS THAT RIGHT?

A. YES.

Q. WHAT DID SHE SAY TO YOU ABOUT AN ICE CREAM TRUCK DRIVER BEING INVOLVED?

A. BEING INVOLVED?

Q. IN ANY WAY IN THIS INSTANCE?

A. THAT WAS APPARENTLY HER SUSPICION BECAUSE JEREMY RAMOS HAD TOLD HER THAT ROBYN HAD MET WITH AN ICE CREAM TRUCK DRIVER.

Q. SHE INDICATED TO YOU THAT ROBYN HAD COME HOME FOR DINNER AROUND 5:45, 6 O'CLOCK FOR DINNER THAT NIGHT?

A. YES.

Q. AFTER THEN, SHE HAD GONE OUT AT NIGHT BY HERSELF SOMEWHERE AT DARK?

A. YES.

[2154] Q. AND JEREMY RAMOS INDICATED TO HER SHE WENT TO MEET THE ICE CREAM TRUCK DRIVER?

A. THAT SHE HAD GONE TO MEET THE ICE CREAM TRUCK DRIVER, YES.

Q. THEN YOU ALSO TALKED TO SHARON SANCHEZ.

SHE ALSO TOLD YOU THAT JEREMY DESCRIBED A PREARRANGED MEETING AT THE TIME WHEN ROBYN WENT BACK OUT AFTER DINNER.

JEREMY HAD DESCRIBED THAT SHE HAD A PREARRANGED MEETING?

A. NO. I BELIEVE TO MY RECOLLECTION IT WAS THAT JEREMY RAMOS HAD BEEN WITH ROBYN WHEN THEY HAD MET WITH THE ICE CREAM DRIVER WITH THE RED HAIR AND THE BUSHY BEARD.

BUT THAT HAD TO HAVE BEEN BEFORE DINNER BECAUSE RAMOS DID NOT LEAVE THE HOUSE WITH ROBYN.

Q. DIDN'T SHE ALSO INDICATE TO YOU THAT JEREMY HAD SAID AFTER DINNER ROBYN HAD GONE OUT TO A PREARRANGED MEETING WITH THE MAN IN THE ICE CREAM TRUCK?

A. YES THAT'S WHAT HE SAID.

Q. IT WAS PREARRANGED THAT SHE WAS GOING TO GO AFTER DINNER TO -

A. APPARENTLY.

Q. THAT'S WHAT YOU PUT IN YOUR POLICE REPORT?

A. YES.

Q. SHE DESCRIBED TO YOU THAT JEREMY SAID THAT ICE CREAM TRUCK DRIVER WAS A MAN, MALE NEGRO, KNOWN TO HAVE VEND ICE CREAM FOR A PERIOD OF TIME IN THE AREA?

[2155] A. YES.

Q. ALSO ON THE 28TH OF SEPTEMBER -

A. I WAS NOT INVOLVED IN THIS CASE ON THE 28TH.

Q. WAS THERE ANYTHING DONE ON THE 28TH OF SEPTEMBER, AROUND 11 O'CLOCK AT NIGHT?

A. BY BALDWIN PARK POLICE DEPARTMENT, YES.

Q. YOU WERE AWARE OF AN INVESTIGATION OF THE BALDWIN PARK POLICE DEPARTMENT?

A. THE SEARCH, YES. AND THE CIRCUMSTANCES SURROUNDING THE DISAPPEARANCE.

MR. DAUGHERTY: MAY I APPROACH, YOUR HONOR.

THE COURT: YES.

BY MR. DAUGHERTY:

Q. SHOWING YOU PAGE 8 OF THE POLICE REPORT.

MR. BURNS: MAY I ASK WHICH ONE?

MR. DAUGHERTY: NUMBER 34.

MR. BURNS: OKAY.

BY MR. DAUGHERTY:

Q. DO YOU RECOGNIZE THAT POLICE REPORT AS BEING A REPORT PREPARED BY THE INVESTIGATOR FROM THE SHERIFF'S DEPARTMENT?

A. YES. THIS IS A PAGE FROM ONE OF OUR SUPPLEMENTALS, YES.

Q. IN THIS REPORT, IT MENTIONED THAT 11 O'CLOCK ON SEPTEMBER 28TH, INTENSIVE HOUSE TO HOUSE SEARCH WAS BEGUN IN THE NEIGHBORHOOD WHERE THE VICTIM HAD LIVED.

IS THAT CORRECT?

A. YES.

[2156] Q. AND THAT DURING THE COURSE OF THE HOUSE TO HOUSE SEARCH, MANY OF THE NEIGHBORS MADE REFERENCE TO A WHITE ICE CREAM TRUCK BEING DRIVEN BY A MAN WITH LONG RED HAIR AND A BUSHY BEARD WHO HAD

BEEN IN THE NEIGHBORHOOD ABOUT THE TIME OF THE DISAPPEARANCE OF THE GIRL?

A. YES.

Q. NOW, WHEN DID YOU RECEIVE THIS INFORMATION?

A. I DIDN'T RECEIVE ANY, TO MY RECOLLECTION, ANY FORMAL REPORTS FROM BALDWIN PARK UNTIL THE 30TH, OR MAYBE - WELL THE 30TH AT THE EARLIEST, SIR.

WHEN I RECEIVED THAT INFORMATION REGARDING THE VARIOUS PERSONS WHO IDENTIFIED THAT PERSON AS BEING IN THE AREA, I DON'T KNOW THAT I CAN REALLY RECALL WHEN I RECEIVED THAT INFORMATION.

Q. THERE WAS A MISSING PERSONS REPORT FILED ON ROBYN THE 28TH?

A. YES.

Q. DID YOU REVIEW THAT MISSING PERSONS REPORT?

A. FOR THE PURPOSES OF OBTAINING RESIDENCE ADDRESS, MOTHER'S NAME, CLOTHING DESCRIPTION.

I DON'T KNOW HOW MUCH DETAIL I WENT INTO ON THE INFORMATION CONTAINED RELATIVE TO THE DISAPPEARANCE OTHER THAN THE TIME AND THE LOCATION.

[2157] Q. WHEN DID YOU FIRST RECEIVE OR REVIEW THAT MISSING PERSONS REPORT?

A. PROBABLY UPON RETURNING TO THE BALDWIN PARK POLICE DEPARTMENT AFTER COMPLETING THE CRIME SCENE INVESTIGATION IN PASADENA AND THAT WOULD BE AROUND 7:30, EIGHT O'CLOCK ON THE MORNING OF THE 29TH.

Q. EARLY MORNING HOURS OF THE 29TH OF SEPTEMBER?

A. YES.

Q. FROM THAT MISSING PERSONS REPORT, THAT CONTAINED A REFERENCE TO ABOUT 5:30 IN THE AFTERNOON ON SEPTEMBER 28, WHEREIN A PARTICULAR ICE CREAM TRUCK AND DRIVER WAS INVOLVED IN AN ACCIDENT NEAR WHERE ROBYN LIVED.

ISN'T THAT CORRECT?

A. I DON'T THINK THAT WAS IN THAT REPORT. I THINK THAT WAS IN A SUPPLEMENTAL REPORT.

Q. I -

A. BECAUSE I GOT THAT INFORMATION ORALLY, INITIALLY. AND IT WAS IN RESPONSE TO MY INQUIRY OF BALDWIN PARK OFFICERS REGARDING ANY SOURCES OF IDENTIFICATION OF ANY ICE CREAM TRUCK DRIVERS THAT WERE IN THE AREA.

Q. OKAY.

IN THIS REPORT, DO YOU KNOW WHERE IT SAYS THIS ADDITIONAL INFORMATION IS ALSO CONTAINED IN THE MISSING PERSONS REPORT? IT CONTAINED A REFERENCE TO 531 HOURS SEPTEMBER 28,

1982, WHEREIN OFFICER HAMMOND OF THE BALDWIN PARK POLICE DEPARTMENT RESPONDED TO A TRAFFIC COLLISION.

[2158] DOESN'T YOUR REPORT INDICATE THAT THE MISSING PERSONS REPORT MADE REFERENCE TO THE ICE CREAM TRUCK ACCIDENT?

A. YES, IT DOES.

THIS REPORT WAS PREPARED ON OCTOBER 2ND. I INSTRUCTED THEM THAT THE INFORMATION RELATIVE TO THEIR REPORT SHOULD CONTAIN ANY INFORMATION THAT MIGHT BE SUBSTANCE TO THIS CASE IN THE FUTURE.

Q. WHEN YOU SAY THIS ADDITIONAL INFORMATION WAS ALSO CONTAINED IN THE MISSING PERSONS REPORT, WHAT ARE YOU TALKING ABOUT?

A. IT SHOULD BE WILL BE CONTAINED.

IT SAVES ACCOUNTING FOR ALL OFFICERS' BEHAVIOR IN ONE REPORT IF I HAVE AN EXPECTATION THAT THEY'RE GOING TO PREPARE A REPORT CONTAINING THIS INFORMATION.

Q. BUT YOU HAD SEEN A MISSING PERSONS REPORT. ONE HAD ALREADY BEEN PREPARED?

A. I DON'T - I CAN'T RECALL IF IT WAS A REPORT OR IT WAS A BULLETIN.

THE INFORMATION ON THE PAPER THAT I SAW EARLY IN THE MORNING HOURS OF SEPTEMBER 29 WAS IN THE FORM OF A BROADCAST. I DON'T

RECALL THAT IT HAD. IN FACT IT'S MY RECOLLECTION THAT IT DID NOT CONTAIN ANY REFERENCE TO THIS ACCIDENT.

Q. WELL, ARE YOU SAYING THAT THIS IS A BASICALLY AN ERROR IN THIS REPORT?

A. PERHAPS THE WAY IT'S WORDED, YES, BECAUSE I [2159] USE THAT EXPRESSION QUITE A BIT.

IF YOU READ WHERE WE ATTEND THE AUTOPSY, ADDITIONAL INFORMATION WILL BE CONTAINED IN A CORONER'S PROTOCOL THAT WILL BE PREPARED AND MADE A PART OF THIS FILE.

Q. SO WHERE IT SAYS THIS ADDITIONAL INFORMATION WAS ALSO CONTAINED IN THE MISSING PERSONS REPORT IT SHOULD BE WILL OR SHOULD BE -

A. SHOULD BE WILL BE CONTAINED, YES.

Q. WHAT ABOUT THE NEXT LINE, IT CONTAINED A REFERENCE TO 531 HOURS, 9/28/82.

A. IT IS IN REFERENCE TO THIS PARTICULAR INFORMATION, YES. BUT NO, I DO NOT RECALL RECEIVING A PREPARED, A FINISHED REPORT ON THE 29TH, A COMPLETED REPORT.

I WAS GIVEN INFORMATION FROM A NUMBER OF SOURCES AND A NUMBER OF DIFFERENT INSTANCES CONCERNING A NUMBER OF DIFFERENT OBSERVATION.

Q. IS THERE A REPORT WHICH CONTAINED AS IT SAYS HERE REFERENCE TO THIS ACCIDENT TO A

DESCRIPTION OF THE ICE CREAM TRUCK AND DESCRIPTION THAT THE DRIVER WAS IN EXCESS OF SIX FEET OVER 200 POUNDS, REDDISH HAIR, LONG BUSHY BEARD.

IS THERE SOME REPORT THAT CONTAINED THAT, SOME KIND OF MISSING PERSONS REPORT?

A. SOME KIND OF MISSING PERSONS REPORT?

Q. YES.

A. SUPPLEMENTAL TO MISSING PERSONS [2160] INVESTIGATION, WHICH BECAME A HOMICIDE INVESTIGATION.

THAT INFORMATION IN ITSELF WOULD NOT BE IN A MISSING PERSONS REPORT. THAT WOULD BE IN A SUPPLEMENTAL INVESTIGATIVE REPORT WHEREIN THE TITLE FULLY BECOMES A HOMICIDE INVESTIGATION.

Q. THIS REPORT WAS WRITTEN BY YOU OR DETECTIVE PATTERSON?

A. YES.

IT INVOLVES THE THREE INVESTIGATORS DICTATING VARIOUS PORTIONS OF THE REPORT TO A STENOGRAPHER.

Q. AT LEAST BY OCTOBER 2ND WHEN THIS REPORT WAS DICTATED OR DOES THAT MEAN TYPED?

A. THAT WOULD BE WHEN IT WAS DICTATED.

Q. WHEN IT WAS DICTATED YOU HAD INFORMATION THAT ON THE MORNING HOURS OF SEPTEMBER 28, 1982 THERE HAD BEEN A HOUSE-TO-HOUSE SEARCH AND THAT THERE HAD BEEN REFERENCES TO A WHITE ICE CREAM TRUCK, A MAN WITH RED HAIR, BUSHY BEARD, AT LEAST ON THIS DATE YOU WERE AWARE OF THAT?

MR. BURNS: OBJECTION, YOUR HONOR.

I THINK COUNSEL IS MIXING - I WITHDRAW THE OBJECTION, I'M SORRY.

THE COURT: BY THE DATE, YOU MEAN THE 30TH?

MR. DAUGHERTY: BY OCTOBER 2ND THE DATE THIS WAS WRITTEN.

Q. AT LEAST ON THIS DATE YOU HAD INFORMATION THAT ON THE MORNING OF SEPTEMBER 28 THERE HAD BEEN THIS HOUSE-TO-HOUSE SEARCH?

A. SHE WASN'T MISSING UNTIL THE EVENING OF THE [2161] 28TH.

Q. WHAT I'M SAYING IS, THE EVENING OF THE 28TH LET'S SAY. YOU HAD INFORMATION THAT ON THE EVENING OF THE 28TH -

A. THERE HAD BEEN A HOUSE-TO-HOUSE SEARCH.

Q. BASED ON THAT HOUSE-TO-HOUSE SEARCH, THERE HAD BEEN INFORMATION ABOUT A PARTICULAR ICE CREAM TRUCK DRIVER WITH A WHITE VAN AND RED HAIR AND A BUSHY RED BEARD?

A. NO. NO.

THE -

Q. MAYBE YOU'RE NOT UNDERSTANDING MY QUESTION.

A. I DO UNDERSTAND YOUR QUESTION.

THAT CUMULATIVE RESULTS OF THEIR HOUSE-TO-HOUSE SEARCH WAS OF NO PARTICULAR, YOU KNOW, SPECIFIC VALUE TO ME.

I HAD TO BEGIN AT THE BEGINNING. I HAD TO START FROM SQUARE ONE. IF THERE WAS ANY REFERENCE TO ANY PERSONS, THEN I WOULD HAVE TO REQUIRE THE IDENTIFICATION OF SOMEBODY THAT GAVE INFORMATION THAT WOULD REQUIRE ME TO FOLLOW-UP.

AND THEN I WOULD HAVE TO HAVE CONTACTED THE PERSONS THAT PROVIDED THAT INFORMATION SO THAT I COULD EVALUATE THE VALUE OF THAT.

I WOULD NOT GO ON AN INFORMATION SUBMITTED TO ME THAT, HEY, A WHOLE BUNCH OF PEOPLE HAVE BEEN OUT AND WE KNOW THAT THIS WHITE ICE CREAM TRUCK IS INVOLVED IN THE DISAPPEARANCE.

[2162] THAT'S RUNNING OFF ON SOMETHING THAT CAN'T EVEN BE ESTABLISHED AS TO ITS ORIGIN.

Q. WHAT MY POINT IS, IS THAT ON OCTOBER 2ND WHEN YOU WROTE THIS REPORT, AT THAT

TIME, YOU FELT YOU HAD ENOUGH OF THAT INFORMATION TO INCLUDE A PARAGRAPH IN THE REPORT?

A. IT SUBSTANTIATED THINGS WE HAD FOUND OUT, YES.

Q. AND THAT YOU MENTIONED IN YOUR REPORT HERE THAT AT LL [sic] O'CLOCK AT NIGHT, SEPTEMBER 28, 1982, THAT THIS HOUSE-TO-HOUSE SEARCH WAS BEGUN; THAT CERTAIN INFORMATION WAS NOTED AND RECORDED.

A REFERENCE WAS MADE TO A WHITE ICE CREAM TRUCK BEING DRIVEN BY A LARGE MAN WITH RED HAIR, BUSHY RED BEARD.

MY QUESTION IS: WHEN DID YOU RECEIVE THE INFORMATION THAT ALLOWED YOU TO WRITE THIS PARAGRAPH? WHEN DID YOU KNOW ABOUT THE HOUSE-TO-HOUSE SEARCH?

A. I KNEW ABOUT THE HOUSE-TO-HOUSE SEARCH THE NEXT DAY ON THE 29TH.

Q. OKAY.

SO YOU KNEW THAT BEFORE -

A. BUT I DIDN'T KNOW OR RECORD ANY SIGNIFICANT, SUSPICIOUS VEHICLE OR REFERENCE TO ANY PARTICULAR VEHICLE BECAUSE IT WAS - IT WAS IN KIND OF A CUMULATIVE INFORMATION.

NOBODY SAID GO SEE - MR. JOE SMITH SAW THE ICE CREAM TRUCK AND SAW ROBYN JACKSON AT

THE ICE CREAM [2163] TRUCK. I WOULD HAVE CERTAINLY RESPONDED TO THAT TYPE OF INFORMATION.

SO I CAN'T EVEN INDICATE THAT I RECEIVED THE INFORMATION ON THE 29TH THAT THERE WAS - THAT THERE WAS INFORMATION REGARDING AN ICE CREAM TRUCK FROM A NUMBER OF RESIDENTS OR WHOEVER THEY CONTACTED.

Q. DO YOU KNOW WHO GAVE YOU THIS INFORMATION AT ALL?

A. IT'S PROBABLY CONTAINED IN THE SUBSEQUENT REPORTS THAT I RECEIVED FROM BALDWIN PARK.

MR. DAUGHERTY: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES.

BY MR. DAUGHERTY:

Q. DID YOU AT SOME POINT IN TIME DURING THE INVESTIGATION TALK TO OFFICER HAMMOND ABOUT HIS FINDINGS, HIS INTERVIEWS?

DO YOU KNOW THE OFFICER I'M REFERRING TO?

A. I RECOGNIZE THE NAME.

I'D HAVE TO SAY THAT I MAY HAVE HAD CONTACT WITH HIM.

Q. DID YOU MAKE ANY NOTES ABOUT A CONTACT YOU HAD WITH OFFICER HAMMOND OR WHAT HE MAY HAVE TOLD YOU?

A. I DON'T BELIEVE SO, BUT I WILL LOOK.

UP UNTIL OCTOBER 1ST, 1981, I HAVE NO INDICATION THAT I SPOKE TO OFFICER HAMMOND.

HOWEVER, I DON'T KNOW THE OFFICER'S NAME OR RECALL THE OFFICER'S NAME THAT TOLD ME THAT HE HAD [2164] INFORMATION REGARDING THE ACCIDENT, THE ACCIDENT THAT LED ME TO COME UP WITH THE NAME OF ROBERT STANSBURY, THE PRIVATE PROPERTY DAMAGE.

Q. YOU DID SEE OFFICER HAMMOND'S REPORT AT SOME POINT IN TIME REGARDING HIS INTERVIEWS?

A. YES. ABSOLUTELY.

Q. YOU KNOW WHEN YOU SAW THAT REPORT?

A. I DON'T REMEMBER SEEING -

MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT.

IF COUNSEL HAS A REPORT HE'S REFERRING TO, HE OUGHT TO GIVE IT TO THE WITNESS, SO THE WITNESS CAN LOOK AT WHICH REPORT WE'RE TALKING ABOUT, SO THAT WE'RE NOT SPECULATING ABOUT SOMETHING.

IF WE'RE TALKING ABOUT PAGE TWO OF OFFICER HAMMOND'S REPORT WHICH CONTAINS THE STATEMENTS OF RANDY HASTINGS, I HAD SPECIFICALLY SHOWN THAT REPORTS TO THIS OFFICER THIS MORNING ON REDIRECT EXAMINATION.

AND THE OFFICER INDICATED HE HAD NOT REVIEWED THAT REPORT PRIOR TO THE CONDUCTING OF THIS INTERVIEW. AND I BELIEVE THAT'S WHAT COUNSEL IS LOOKING AT AT THIS POINT IN TIME.

NOW, UNLESS THEY'RE TALKING ABOUT SOME OTHER REPORTS, AT THIS POINT THE QUESTION IS VAGUE AS TO WHAT REPORT AND I'D OBJECT TO THAT BASIS.

MR. DAUGHERTY: WE'RE TALKING ABOUT OFFICER HAMMOND'S REPORT. THE OFFICER SEEMS TO KNOW WHAT I'M REFERRING TO.

MR. BURNS: ON THAT POINT I'LL OBJECT BECAUSE I [2165] DON'T KNOW WHAT REPORT YOU'RE TALKING ABOUT THERE. THERE ARE AT LEAST THREE REPORTS BY OFFICER HAMMOND THAT I'M AWARE OF.

MR. DAUGHERTY: I'M NOT SURE IF THERE'S A LEGAL OBJECTION.

THE COURT: I'M GOING TO SUSTAIN IT IF HE DOESN'T KNOW WHERE YOU ARE, SO YOU CAN BRING US ALL CURRENT.

MR. DAUGHERTY: MAY I APPROACH, YOUR HONOR?

THE COURT: YES, YOU MAY.

BY MR. DAUGHERTY:

Q. OFFICER, SHOWING YOU A THREE-PAGE REPORT, APPEARS TO BE WITH ONE, TWO AND

THREE FROM BALDWIN PARK POLICE DEPARTMENT, SIGNED BY OFFICER M. HAMMOND, DATED SEPTEMBER 29, 1982.

ARE YOU FAMILIAR WITH THAT REPORT? HAVE YOU SEEN THAT REPORT BEFORE?

A. YES.

Q. NOW, THE FIRST PAGE IS ENTITLED MISSING - IS THAT JUST A COPY OF THE MISSING PERSONS REPORT?

A. THIS IS - IT'S LABELED MISSING PERSONS REPORT. IT'S ALL LABELED MISSING PERSONS REPORT, YES.

Q. IS THIS THE MISSING PERSONS REPORT YOU WERE REFERRING TO IN YOUR POLICE REPORT THAT WE REFERRED TO A FEW MINUTES AGO, IF YOU KNOW?

A. WELL, IF IT CONTAINS INFORMATION RELATIVE TO STANSBURY'S ACCIDENT, THEN THAT IS THE ONE I'M REFERRING TO.

Q. DID YOU EVER TALK TO RAY COOLEY ABOUT THIS [2166] CASE?

A. I CAN'T RECALL.

THE NAME SOUNDS -

Q. THE PERSON I'M REFERRING TO IS RANDY HASTING'S GRANDFATHER? OR RANDY HASTINGS, DID YOU TALK TALK TO EITHER OF THOSE TWO PERSONS?

A. NOT THAT I RECALL.

Q. OKAY.

MR. DAUGHERTY: I HAVE NOTHING FURTHER.

THE COURT: MR. BURNS?

MR. BURNS: YES, YOUR HONOR.

REDIRECT EXAMINATION +

BY MR. BURNS:

Q. OFFICER, FOR THE MOMENT, DIRECTING YOUR ATTENTION TO PAGE EIGHT OF YOUR OCTOBER 2ND REPORT, I'D ASK THAT YOU READ THE REMAINDER OF THE PARAGRAPH THAT DEFENSE COUNSEL SHOWED YOU BEFORE.

A. BEGINNING HERE?

Q. YES, PLEASE.

A. "AT 2300 HOURS, SEPTEMBER 28, 1982 AN INTENSIVE HOUSE-TO-HOUSE SEARCH WAS BEGUN. DURING THE COURSE OF THE HOUSE-TO-HOUSE SEARCH, CERTAIN INFORMATION WAS NOTED AND ALSO RECORDED IN THIS REPORT. A REFERENCE WAS MADE TO A WHITE ICE CREAM TRUCK BEING DRIVEN BY A LARGE MAN WITH LONG RED HAIR AND A BUSHY RED BEARD WHO HAD BEEN OBSERVED IN THE NEIGHBORHOOD PRIOR TO - IN CLOSE PROXIMITY TO THE TIME OF THE DISAPPEARANCE OF THE GIRL.

[2167] THERE WAS ALSO REFERENCE TO A SMALL BLUE PICKUP TRUCK WHICH WAS PARKED IN CLOSE PROXIMITY TO 4511 PHELAN BETWEEN THE HOURS OF 2:00 P.M. AND 6:00 P.M. ON TUESDAY, 9/28/82. ALSO, AN OLDER MAN PUSHING AN ICE CREAM CART HAD BEEN NOTED IN THE VICINITY AT APPROXIMATELY 5:30 P.M. ON TUESDAY."

Q. THANK YOU.

OFFICER, BASED ON THAT PARAGRAPH, I UNDERSTAND YOUR TESTIMONY THAT YOU'RE NOT FAMILIAR WITH EXACTLY WHEN THIS INFORMATION WAS RECEIVED. APPARENTLY SOMETIME DURING THE HOUSE-TO-HOUSE SEARCH SOMEONE TALKED ABOUT AN OLD MAN PUSHING AN ICE CREAM CART.

IS THAT RIGHT?

A. YES, SIR.

Q. SOMEONE ALSO TALKED ABOUT SOMEONE USING A BLUE PICKUP TRUCK IN THE AREA.

IS THAT RIGHT?

A. YES, SIR.

Q. WE ALSO NOTE THAT THERE IS A COMMENT CONCERNING A WHITE MAN, LARGE WITH RED BUSHY BEARD BEING IN AND AROUND THE NEIGHBORHOOD.

IS THAT RIGHT?

A. THAT'S CORRECT.

Q. NOW, BESIDES JUST THAT GENERAL REFERENCE, YOU IN FACT KNEW THERE WAS SUCH A PERSON IN AND AROUND THE NEIGHBORHOOD, DID YOU NOT?

A. YES.

Q. AND YOU KNEW THAT FROM YOUR INTERVIEWS WITH [2168] JEREMY RAMOS.

IS THAT RIGHT?

A. THAT'S CORRECT.

Q. SPECIFICALLY WITH REGARDS TO WHAT YOU LEARNED FROM JEREMY RAMOS, LET'S CLEAR UP A FEW DETAILS.

THIS PIETRINA SCOPAZZI, WHAT WAS HER RELATIONSHIP TO JEREMY RAMOS, DO YOU RECALL, THE MOTHER?

A. THE MOTHER.

MR. DAUGHERTY: OBJECTION - NEVER MIND, WITHDRAW IT.

BY MR. BURNS:

Q. WAS SHE THE MOTHER OF JEREMY RAMOS?

A. YES.

Q. NOW, BASICALLY YOU TALKED TO PIETRINA SCOPAZZI AND TO MRS. SANCHEZ.

IS THAT CORRECT?

A. YES.

Q. AND AFTER THAT CONVERSATION WITH THOSE TWO LADIES, YOU ACTUALLY TALKED TO JEREMY RAMOS.

IS THAT RIGHT?

A. CORRECT.

Q. AND PIETRINA SCOPAZZI AND MRS. SANCHEZ, THEIR INFORMATION TO YOU WAS BASED ON WHAT THEY HEARD FROM JEREMY RAMOS.

IS THAT RIGHT?

MR. DAUGHERTY: OBJECT TO LEADING QUESTIONS CONSISTENTLY USED THIS THIS LINE OF QUESTIONING.

THE COURT: SUSTAINED.

[2169] BY MR. BURNS.

Q. WHAT WAS THE SOURCE OF THE INFORMATION THAT PIETRINA SCOPAZZI AND MRS. SANCHEZ HAD FOR YOU?

A. THEY WERE RELAYING INFORMATION THEY HAD OBTAINED FROM JEREMY RAMOS.

Q. SO THAT THE ONLY TRUE WITNESS TO THE ACTS INVOLVED WAS THEN WHOM AT THAT POINT IN TIME TO YOUR KNOWLEDGE?

A. JEREMY RAMOS.

Q. AND DID YOU THEN SUBSEQUENTLY HAVE A CONVERSATION WITH JEREMY RAMOS?

A. YES.

Q. THAT WAS BEFORE MEETING MR. STANSBURY OR HAVING A CONVERSATION WITH MR. STANSBURY?

A. YES.

Q. AND HIS INDICATION TO YOU WAS THAT THE OBSERVATION OF THE COMMUNICATION HE SAW BETWEEN THIS WHITE MAN WITH A RED BEARD AND THE VICTIM OCCURRED SOMETIME BEFORE DINNER.

IS THAT RIGHT?

MR. DAUGHERTY: OBJECTION, LEADING.

MR. BURNS: YOUR HONOR, I CAN'T LEAD EXCEPT TO ESTABLISH A TIME FRAME AND ASK THE QUESTION AS TO WHETHER OR NOT THE CONVERSATION DEALT WITH THAT TIME FRAME.

THE COURT: SUSTAINED.

BY MR. BURNS:

Q. WHAT INFORMATION DID HE GIVE YOU CONCERNING WHEN HE SAW THIS WHITE MAN AND RED BEARD?

[2170] A. HE INDICATED HE WAS IN COMPANY WITH ROBYN JACKSON PRIOR TO THEIR GOING INTO DINNER, AT WHICH TIME HE OBSERVED ROBYN JACKSON HAVING A CONVERSATION WITH THE MAN, THE WHITE MAN WITH THE RED BEARD.

Q. ALL RIGHT.

DID HE INDICATE THAT HE SAW OR - STRIKE THAT.

DID HE INDICATE THAT THAT WAS THE LAST TIME THAT HE SAW THE VICTIM?

A. NO.

Q. WHAT DID HE INDICATE HAPPENED TO THE VICTIM FROM THEN, ACCORDING TO HIS KNOWLEDGE?

A. AFTER THE VICTIM COMPLETED HER MEAL, SHE LEFT. JEREMY RAMOS TRIED TO GO WITH HER WHEN SHE LEFT HER RESIDENCE.

SHE STOPPED HIM AND TOLD HIM THAT HE COULD NOT ACCOMPANY HER -

Q. LET ME - I'M NOT SURE YOU UNDERSTOOD THE QUESTION THAT'S WHY I'M INTERRUPTING YOU.

MR. DAUGHERTY: I'D LIKE TO HAVE THE REST OF THE ANSWER IN.

MR. BURNS: I'LL WITHDRAW THE QUESTION THEN.

MR. DAUGHERTY: THE QUESTION'S PARTIALLY ANSWERED.

THE COURT: READ THE QUESTION AND THE ANSWER BACK TO ME.

(LAST QUESTION AND PARTIAL ANSWER WAS READ BACK.)

THE COURT: OVERRULED. YOU MAY ANSWER. FINISH THE ANSWER.

[2171] THE WITNESS: SO JEREMY RAMOS WATCHED ROBYN JACKSON GO NORTHBOUND ON

PHELAN AND CONTACT THE DRIVER OF A BLUE ICE CREAM TRUCK THAT HE THOUGHT WAS A MALE NEGRO.

BY MR. BURNS:

Q. IS THAT THE LAST TIME JEREMY INDICATED HE HAD ANY CONTACT OR ANY KNOWLEDGE AS TO ROBYN'S LOCATION?

A. YES.

Q. AND THAT WAS THE LAST TIME HE SAW HER WAS GOING IN THIS DIRECTION TOWARDS SOMEONE MATCHING THE DESCRIPTION OTHER THAN MR. STANSBURY?

A. ACTUALLY CONVERSING WITH.

Q. WAS THERE ANYONE TO YOUR KNOWLEDGE ON THE 29TH PRIOR TO MEETING MR. STANSBURY, PRIOR TO YOUR MEETING MR. STANSBURY, WHO HAD INDICATED ANYTHING TO YOU CONCERNING THIS VICTIM HAVING A CONVERSATION OR BEING IN CONTACT WITH ANYONE MATCHING THIS DEFENDANT'S DESCRIPTION AT SOME POINT IN TIME AFTER DINNER ROUGHLY CONTEMPORANEOUS WITH HER DISAPPEARANCE?

A. NO.

MR. BURNS: NO FURTHER QUESTIONS.

THE COURT: ANYTHING FURTHER?

MR. DAUGHERTY: NOT AT THIS TIME, YOUR HONOR.

PERHAPS THIS WOULD BE A GOOD TIME TO TAKE A VERY SHORT BREAK TO REVIEW THOSE PHOTOGRAPHS.

THE COURT: FINE. YOU MAY STEP DOWN, OFFICER.

WE'LL TAKE A SHORT BREAK TO LOOK AT THE PHOTOGRAPHS. LET ME KNOW WHEN YOU'RE READY.

MR. BURNS: YOUR HONOR, THE COURT MAY ALSO WANT TO [2172] CONSIDER SOMETHING ELSE THAT MR. DAUGHERTY HAD ASKED CONCERNING SCHEDULING, IF YOU WANTED TO BRING THAT OUT AT THIS POINT TO MAKE A DECISION.

MR. DAUGHERTY: YES.

MR. BURNS: THIS WOULD BE A GOOD TIME.

MR. DAUGHERTY: YES.

THIS WOULD BE A GOOD TIME.

THE COURT HAD INDICATED TO US SEVERAL WEEKS AGO THAT OR SOMETIME AGO THAT THERE WERE GOING TO BE TWO BREAKS IN THE TRIAL PROCESS. ONE BEING NOVEMBER 21ST TO NOVEMBER 28TH, ONE BEING DECEMBER 25TH TO JANUARY 2ND.

THE COURT: I'LL BE HERE ON THE 21ST.

MR. DAUGHERTY: RIGHT.

WHEN I SAY THE 21ST, I'M TALKING ABOUT FIVE O'CLOCK ON THE 21ST UNTIL THE 29TH, I GUESS.

THE COURT: RIGHT.

MR. DAUGHERTY: OF NOVEMBER AND ALSO A BREAK OVER CHRISTMAS FROM DECEMBER 25TH UNTIL JANUARY 2ND.

THE COURT: YES.

MR. DAUGHERTY: AND WITH THAT IN MIND, SINCE I HAD NOT HAD A VACATION IN ABOUT TWO YEARS, I ATTEMPTED TO MAKE PLANS TO TAKE ONE OF THOSE TWO WEEKS OFF, PERIODS OF TIME OFF. AND THE ONLY PROBLEM I HAVE RUN INTO IS THAT IN TAKING EITHER ONE OF THOSE WEEKS OFF IT'S GOING TO INVOLVE AN EXTRA DAY TO TAKE OFF.

NOW, I DISCUSSED IT WITH MR. BURNS BECAUSE HE MIGHT HAVE BEEN MAKING THE SAME KIND OF PLANS AND I CAN TAKE A VACATION EITHER THE 22ND THROUGH THE 29TH WHICH [2173] WOULD MEAN ONE ADDITIONAL DAY OR I COULD TAKE A VACATION FROM THE 25TH OF DECEMBER THROUGH THE 4TH OF JANUARY. AND EITHER ONE OF THOSE WEEKS WOULD BE FINE WITH ME.

MR. BURNS HAD SOME IDEAS ALONG THAT LINE.

MR. BURNS: YOUR HONOR, THE ONLY COMMENT I MADE TO MR. DAUGHERTY, AND I WILL MAKE TO THIS COURT IS, OBVIOUSLY I'M WILLING TO WORK WITH MR. DAUGHERTY AND THE COURT.

BUT JUST IN VIEW OF MY CONCERN WHICH WOULD PRIMARILY BE FOR THE JURORS OR PROSPECTIVE JURORS IN THIS CASE, AND WHAT DIFFICULTY WE MAY OR MAY NOT HAVE IN SELECTING JURORS IS THAT CHRISTMAS AND NEW YEARS FALL ON TUESDAY THIS YEAR.

IT SEEMS TO ME APPROPRIATE THAT WE WOULD BREAK EITHER THE THURSDAY OR FRIDAY OF THE WEEKENDS BEFORE THE CHRISTMAS WEEKENDS THAT THERE WAS NO REASON TO COME BACK MONDAY THE 24TH CHRISTMAS EVE DAY FOR ONE DAY'S MATTERS.

THAT WE WOULD THEN BREAK EFFECTIVELY EITHER THE 20TH OR 21ST WHICH WOULD BE THE THURSDAY OR FRIDAY BEFORE THE WEEK OF CHRISTMAS AND THEN RETURN THE MONDAY AFTER YEARS BECAUSE THAT WOULD THEN BE FOR PROSPECTIVE JURORS, COUNSEL AND ALL MEMBERS OF THIS CASE A SOLID TWO WEEK BREAK AROUND THE HOLIDAY TIME FRAME.

THE COURT: MY FEELING IS THAT WE WOULD, THE LAST TIME WE MET ON THIS CASE WOULD BE THE 20TH OF DECEMBER AND THAT WE WOULD RECONVENE ON THE SECOND OF JANUARY.

NOW THAT 20TH IS -

MR. DAUGHERTY: THAT'S WHAT THE COURT HAD [2174] INDICATED. WHAT MR. BURNS I THINK WAS INDICATING THAT IT MIGHT BE APPROPRIATE TO GO OVER UNTIL THE 7TH OF JANUARY.

THE COURT: THE SEVENTH?

THE COURT: TWO FULL WEEKS.

MR. DAUGHERTY: TO GIVE THE JURORS THAT PERIOD OF TIME OFF.

MR. BURNS: WHATEVER THE COURT WISHES TO DO.

THE COURT: WELL, THAT'S ALMOST THREE FULL WEEKS.

MR. BURNS: I BELIEVE THAT'S TWO, YOUR HONOR.

THE COURT: WELL, FROM THE 21ST TO THE 28TH IS A WEEK. THE 21ST TO THE 27TH IS A WEEK AND THEN FROM THE 28TH TO THE SECOND IS ANOTHER FIVE DAYS.

I'LL ACCOMMODATE YOU GENTLEMEN. I UNDERSTAND YOU NEED VACATIONS. IT SEEMS TO ME TWO AND A HALF, THREE WEEKS BREAK MIGHT BE A LITTLE MUCH.

IF THAT'S THE ONLY TIME YOU'VE GOT, WE'LL CONSIDER IT.

MR. BURNS: YOUR HONOR, I WAS JUST THINKING OF PICKING A JURY. I KNOW A LOT OF JURORS LIKE TO TAKE VACATIONS DURING THE CHRISTMAS HOLIDAYS AND IF WE'RE GOING TO PICK A JURY AND INDICATE THEY'RE GOING TO BE WORKING THROUGH CHRISTMAS WHICH IS CLEARLY WHAT'S GOING TO TAKE PLACE -

THE COURT: I DIDN'T MEAN THAT. IF WE BREAK ON THE 20TH, IF THE LAST DAY WE MEET IS

THE 20TH THAT'S FIVE DAYS BEFORE CHRISTMAS. WE COME BACK A DAY OR TWO AFTER THE FIRST OF THE YEAR.

MR. BURNS: I WOULD JOIN IN DEFENSE COUNSEL'S [2175] REQUEST THAT WE COME BACK ON JANUARY THE 7TH, ASSUMING THERE'S NO OBJECTION. IF WE BREAK ON THE 20TH OF DECEMBER AND COME BACK ON THE 7TH OF JANUARY.

MR. DAUGHERTY: MY REASON IS THAT - AND MR. STANSBURY ALSO WOULD JOIN IN THE REQUEST ALSO I MIGHT NOTE FOR THE RECORD.

THE COURT: I DON'T THINK HE'S GOING ANY PLACE.

MR. DAUGHERTY: NO.

AND MY REASONS WERE JOINT FOR ASKING FOR THE - TWO REASONS.

THE COURT: THAT'S FINE, GENTLEMEN. I'M NOT GOING TO ARGUE WITH YOU. THAT'S FINE.

WHEN WE GET DOWN TO THAT POINT, YOU CAN RELY - WE'LL BREAK ON - THE 20TH WILL BE THE LAST DAY BEFORE THE 7TH.

MR. DAUGHERTY: I THOUGHT IT WOULD BE REFRESHING TO HAVE MR. BURNS AND I JOIN IN SOMETHING ON THIS CASE TOGETHER.

IT'S A JOINT REQUEST.

THE COURT: YES. THANK YOU.

MR. BURNS: ALWAYS WILLING TO COOPERATE.

THE COURT: THANK YOU, GENTLEMEN.
LET ME KNOW WHEN YOU'RE READY.

(RECESS)

[2176] MR. BURNS: YES, YOUR HONOR, ON THE ISSUE OF THE PHOTOGRAPHS, MR. STANSBURY HAS HAD A CHANCE TO GO THROUGH THE PHOTOGRAPHS WHICH I HAVE.

HE HAS INDICATED THAT A NUMBER OF THE PHOTOGRAPHS WHICH I HAVE ARE DUPLICATES.

HE'S INDICATED THAT HE HAS AT LEAST ONE COPY OF ALL OF THE PHOTOGRAPHS WHICH I HAVE EXCEPT FOR THERE'S EIGHT WHICH I HAVE IN MY HAND, AND I AM NOW HANDING HIM THESE EIGHT PHOTOGRAPHS FOR THE RECORD.

IT IS MY UNDERSTANDING AT THAT POINT IN TIME THAT MR. STANSBURY AGREES THAT THE PHOTOGRAPHS WHICH I HAVE SHOWN HIM AS THE PASADENA PHOTOGRAPHS, HE HAS AT LEAST ONE COPY OF WHAT I HAVE.

DEFENDANT STANSBURY: I WOULD SO STIPULATE, YOUR HONOR.

THANK YOU, MR. BURNS.

THE COURT: THANK YOU.

MR. BURNS: WITH REGARD TO EVIDENCE ON THE MIRANDA MOTION, I BELIEVE MR. JOHNSTON HAS BEEN CONCLUDED AT THIS TIME.

HIS TESTIMONY BEING CONCLUDED, THE PEOPLE HAVE NO FURTHER EVIDENCE TO PRESENT ON THIS MOTION.

THE COURT: MR. DAUGHERTY?

MR. DAUGHERTY: VERY BRIEFLY, YOUR HONOR.

WE WANTED SERGEANT HIGGENBOTHAM, VERY BRIEFLY.

DEFENDANT STANSBURY: YOUR HONOR, MAY I ASK THAT THIS DIAGRAM BE REMOVED FROM THE BOARD BEFORE SERGEANT [2177] HIGGENBOTHAM COMES TO THE STAND?

THE COURT: YES. WOULD YOU COVER THAT UP, MR. BURNS.

MR. BURNS: YES, YOUR HONOR.

THE COURT: THANK YOU.

THE RECORD SHOULD REFLECT THAT THERE ARE NO DIAGRAMS IN THE COURTROOM OR ANY EVIDENCE VISIBLY DISPLAYED.

DANIEL HIGGENBOTHAM, +
A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: TAKE THE WITNESS STAND.

STATE YOUR NAME FOR THE RECORD AND SPELL YOUR LAST NAME?

THE WITNESS: DANIEL HIGGENBOTHAM.
H-I-G-G-E-N-B-O-T-H-A-M.

THE COURT: YOU MAY PROCEED.

MR. DAUGHERTY: MR. STANSBURY IS GOING TO CONDUCT THIS EXAMINATION.

THE COURT: MR. STANSBURY, YOU MAY PROCEED, SIR.

[2178] DIRECT EXAMINATION +
BY DEFENDANT STANSBURY:

Q. SERGEANT HIGGENBOTHAM, I BELIEVE YOU ARE CURRENTLY EMPLOYED BY THE BALDWIN PARK POLICE DEPARTMENT. IS THAT CORRECT?

A. YES, SIR.

Q. WERE YOU EMPLOYED BY THEM ON SEPTEMBER THE 29TH OF 1982?

A. YES, SIR, I WAS.

Q. ON THAT DATE DID YOU RECEIVE ANY INFORMATION CONCERNING MYSELF IN THIS CASE?

A. YES, SIR, I DID.

Q. COULD YOU PLEASE RELATE WHAT THAT INFORMATION WAS?

A. I WAS ASKED TO RESPOND TO AN ADDRESS ON MISSION ALONG WITH DETECTIVE JOE LEE, RESERVE OFFICER GRAY AND MULCAHY TO SEE IF WE COULD LOCATE OR CONTACT A ROBERT STANSBURY AND HAVE HIM COME TO THE POMONA POLICE DEPARTMENT BECAUSE LOS ANGELES SHERIFF'S DEPARTMENT HOMICIDE WANTED TO QUESTION HIM.

Q. CAN YOU SPECIFY WHO IN THE LOS ANGELES SHERIFF'S DEPARTMENT REQUESTED THIS OF YOU?

A. SERGEANT JOHNSTON.

Q. WERE YOU TOLD ANYTHING AT THAT TIME RELATING TO THE ALLEGED CRIME WITHIN THIS MATTER?

A. NO, SIR.

Q. WERE YOU GIVEN ANY OTHER INFORMATION?

A. NO, SIR.

[2179] Q. WERE YOU GIVEN ANY SPECIFIC INSTRUCTIONS CONCERNING BRINGING THE INDIVIDUAL IN QUESTION IN?

A. NO SPECIFIC INSTRUCTIONS OTHER THAN TO SEE IF WE COULD LOCATE ROBERT STANSBURY, SEE IF HE WOULD RESPOND THE POMONA POLICE DEPARTMENT.

Q. YOU WERE GIVEN NO OTHER INSTRUCTIONS IN ANYWAY WHATSOEVER OTHER THAN THAT?

A. NO, SIR.

DEFENDANT STANSBURY: ONE MOMENT, YOUR HONOR.

Q. ARE YOU SAYING THAT YOU WERE GIVEN NO INSTRUCTIONS TO BRING ME TO THE POLICE DEPARTMENT AT ALL?

A. WE WERE SENT TO THE TRAILER PARK TO LOCATE ROBERT STANSBURY AND HAVE HIM RESPOND TO THE POMONA POLICE DEPARTMENT, WHETHER HE ACCOMPANIED US OR DROVE ON HIS OWN, HOWEVER HE WANTED TO GET THERE.

Q. UPON ARRIVING AT THE TRAILER PARK, SERGEANT HIGGENBOTHAM, COULD YOU PLEASE EXPLAIN HOW YOU AND THE OTHER OFFICERS DEPLOYED YOURSELVES AT THAT TIME?

A. OFFICER JOE LEE AND RESERVE OFFICER MULCAHY, UPON MY DIRECTION, WERE SENT TO THE FRONT DOOR. AND MYSELF AND RESERVE OFFICER GRAY ALSO WENT TO THE FRONT DOOR APPROXIMATELY 10 FEET BEFORE, JUST OFF TO THE LEFT.

Q. JUST TO THE LEFT.

AT THAT TIME, SERGEANT HIGGENBOTHAM, WHERE WERE YOUR WEAPONS LOCATED?

A. I ONLY HAD ONE. IT WAS IN MY HAND.

Q. IT WAS IN YOUR HAND?

[2180] A. YES, SIR.

Q. CAN YOU PERHAPS RECALL WHERE THE WEAPONS OF THE OTHER INDIVIDUALS THAT WERE WITH YOU WERE LOCATED?

A. ONLY OFFICER GRAY WHO WAS BY MY SIDE. AND SHE HAD HER WEAPON IN HER HAND.

Q. YOU DO NOT RECALL WHERE THE GUNS OF THE OTHER TWO OFFICERS WERE?

A. NO, SIR. THEY WERE IN FRONT OF ME, AND I COULDN'T SEE.

Q. DID YOU GIVE THE INSTRUCTION FOR THE WEAPONS TO BE DRAWN, OR WAS THAT SUGGESTED BY SOMEONE ELSE, OR WHAT?

A. I DID NOT GIVE THAT DIRECTION.

Q. DID YOU, SAY, IN YOUR OWN INITIATIVE DRAW YOUR GUN.

A. I HAD MY GUN OUT, YES.

Q. WAS THERE ANY PARTICULAR REASON FOR THAT?

A. WELL, SEVERAL REASONS.

Q. COULD YOU PLEASE EXPLAIN THEM?

A. ON THAT DATE, I WAS THE SUPERVISOR FOR THE NARCOTIC AND BURGLARY SUPPRESSION TEAM WORKING UNDERCOVER ALONG WITH DETECTIVE LEE.

WE WERE IN PLAIN CLOTHES. WE WERE NOT IN UNIFORM.

WE HAD NO IDEA OF THE AREA THAT WE WERE IN. NOT FAMILIAR WITH THAT AREA.

IT WAS LATE AT NIGHT, AND WE WERE GOING INTO A TRAILER PARK THAT WE WERE UNAWARE OF TO MAKE CONTACT [2181] WITH SOMEONE WHO WE HAD NO IDEA WHO HE WAS, NOT EVEN KNOWING IF THAT PERSON WAS THERE. AND POSSIBLY EVEN STUMBLING ONTO SOMETHING OR INTERRUPTING SOME TYPE OF A CRIME.

AND THE WEAPON WAS IN A READY POSITION.

Q. WERE YOU FACING THE TRAILER THAT I WAS SUPPOSED TO HAVE BEEN IN AT THAT TIME?

A. YES, SIR.

Q. WAS OFFICER GRAY FACING THAT TRAILER?

A. YES, SIR.

Q. WERE THE OTHER TWO OFFICERS FACING THAT TRAILER?

A. YES, SIR.

Q. WITH YOUR GUNS DRAWN?

A. THE GUNS WERE OUT.

Q. WERE YOUR GUNS DRAWN?

A. COULD YOU CLARIFY WHAT YOU MEAN BY DRAWN?

Q. BEING DRAWN, MEANING FROM THE HOLSTER OR WHEREVER YOU CONTAIN THEM ON YOUR BODY AT NORMAL TIMES WHEN THEY ARE NOT IN YOUR HAND.

A. IF I CAN CLARIFY MY DEFINITION OF DRAWN?

Q. VERY WELL.

A. WHEN I DRAW MY GUN, I PULL OUT OF MY HOLSTER, AND I POINT IT AT SOMEONE. THAT'S MY DEFINITION OF DRAWING MY GUN.

Q. THERE WOULD HAVE BEEN A MISUNDERSTANDING ON MY PART THEN, YES, SIR.

A. MY WEAPON, USING MY DEFINITION, WAS NOT [2182] DRAWN.

Q. VERY WELL, THANK YOU.

BUT YOU HAD YOUR GUN OUT IN CASE OF RUNNING INTO SOMETHING ELSE WITHIN THE PARK.

IS THAT CORRECT?

A. THE WEAPON WAS OUT FOR MY PROTECTION.

Q. AND EVERYONE WAS FACING THE TRAILER I WAS IN?

A. YES, SIR. WE WERE GOING TO THAT TRAILER.

Q. NO ONE BOTHERED TO LOOK AROUND IN THE OTHER AREAS IN OTHER DIRECTIONS?

A. WE DROVE INTO THE TRAILER PARK, AND WE LOOKED AROUND.

BUT WHEN WE GOT TO THE SPECIFIC TRAILER, THEN OUR ATTENTION WAS ON THAT TRAILER.

Q. THANK YOU.

COULD YOU PERHAPS - YOUR HONOR, FIRST COULD WE PERHAPS HAVE THE TOP CHART REMOVED FROM THE BULLETIN BOARD.

I WOULD LIKE TO REQUEST THAT SERGEANT HIGGENBOTHAM ATTEMPT TO DRAW A DIAGRAM, PLACING THE POSITIONS OF THE VARIOUS OFFICERS IN QUESTION AS ACCURATELY AS HE POSSIBLY CAN FROM HIS MEMORY.

THE COURT: YES.

OFFICER JOHNSTON, IF YOU WOULD ASSIST.

THANK YOU.

YOU CAN PROBABLY JUST PULL IT BACK OVER THE TOP.

ALL RIGHT.

[2183] OFFICER HIGGENBOTHAM, WOULD YOU STEP TO THE BOARD. AND YOU UNDERSTAND THE DIAGRAM THAT MR. STANSBURY IS ASKING YOU TO MAKE?

THE WITNESS: YES, YOUR HONOR. I BELIEVE I DO.

MR. BURNS: WOULD THE RECORD INDICATE THAT THE DIAGRAM THAT WAS ON THE BOARD WAS COVERED PRIOR TO THIS OFFICER TESTIFYING. AND IT HAS BEEN REMOVED IN SUCH A MANNER THAT HE WAS NOT ABLE TO VIEW IT.

THE COURT: I BELIEVE THE RECORD ALREADY INDICATES THAT. BUT YES, IT MAY SO INDICATE THAT.

MR. BURNS: ALL RIGHT. FINE. THANK YOU.
BY DEFENDANT STANSBURY:

Q. I THINK THAT YOU HAVE INDICATED THE VARIOUS INDIVIDUALS BY X'S.

I CANNOT MAKE OUT THE NAMES FROM THIS DISTANCE.

COULD YOU PLEASE EXPLAIN THEM TO ME?

A. THIS IS THE FRONT DOOR OF THE TRAILER, AS I RECALL IT.

THIS IS OFFICER LEE, OFFICER MULCAHY, MYSELF, AND OFFICER GRAY.

Q. AND WHERE WOULD YOUR CARS HAVE BEEN PARKED, OFFICER HIGGENBOTHAM?

A. AS I RECALL, THE VEHICLES WERE PARKED - I THINK THE DIRECTION WOULD BE SOUTH BECAUSE THIS IS NORTH.

Q. COULD YOU PERHAPS PLACE YOUR FIRST INITIAL AND LAST NAME ON THE DIAGRAM.

A. ANYWHERE ON THE DIAGRAM?

[2184] Q. YES, ANYWHERE ON THE DIAGRAM.
THANK YOU.

THE COURT: YOU MAY RESUME YOUR SEAT?

THE WITNESS: THANK YOU.

DEFENDANT STANSBURY: I WOULD HAVE NO FURTHER QUESTIONS AT THAT TIME.

THE COURT: MR. BURNS?

CROSS-EXAMINATION +

BY MR. BURNS:

Q. MR. HIGGENBOTHAM, PRIOR TO GOING TO THAT TRAILER, HAD YOU DISCUSSED A DIFFERENT DEPLOYMENT AROUND THE TRAILER?

A. YES, SIR.

Q. AND DID YOU DISCUSS THAT DEPLOYMENT WITH OFFICER LEE?

A. YES, SIR.

Q. WHAT DEPLOYMENT DID YOU DISCUSS PRIOR TO GOING INTO THE TRAILER WITH OFFICER LEE?

A. NOT BEING FAMILIAR WITH THE TRAILER OR THE SURROUNDINGS, NORMALLY WE TAKE POSITIONS OF COVER AT CORNERS TO CONTAIN ALL THE SIDES OF A BUILDING.

HOWEVER, UPON ARRIVING AT THE TRAILER PARK, THAT DEPLOYMENT HAD CHANGED BECAUSE OF THE SURROUNDINGS, AND IT WAS BETTER COVERAGE FROM THE POINT THAT WE TOOK WHEN WE GOT THERE RATHER THAN THE PLANNED DEPLOYMENT PRIOR TO ARRIVING.

Q. OFFICER HIGGENBOTHAM, AT THE TIME YOU WENT TO [2185] TALK TO MR. STANSBURY, WERE YOU INSTRUCTED THAT HE WAS A SUSPECT OR A WITNESS IN THIS CASE, OR DID YOU RECEIVE ANY SUCH INSTRUCTION?

A. THE ONLY INFORMATION WE RECEIVED IS HE WAS WANTED FOR QUESTIONING. WAS THERE ANY INDICATION AT THAT TIME THAT IF HE DID NOT WISH TO COME THAT YOU WERE TO ARREST HIM OR TAKE ANY KIND OF CUSTODY OF HIM AT THAT TIME?

A. NO, SIR.

Q. I BELIEVE YOU INDICATED YOU WERE TO OFFER HIM THE OPPORTUNITY OF DRIVING HIMSELF TO THE POLICE STATION?

A. YES, SIR.

MR. BURNS: I HAVE NO FURTHER QUESTIONS.

THE COURT: MR. STANSBURY?

REDIRECT EXAMINATION +
BY DEFENDANT STANSBURY:

Q. SERGEANT HIGGENBOTHAM, I BELIEVE YOU WERE WORKING PRIOR TO THAT TIME, THAT NIGHT, WERE YOU NOT?

MR. BURNS: OBJECTION.

THE WITNESS: ON THE NIGHT OF SEPTEMBER 29TH OF 1982 -

MR. BURNS: OBJECTION, YOUR HONOR. BEYOND THE SCOPE OF MY CROSS-EXAMINATION.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: THEN, YOUR HONOR, AT THIS TIME, MAY I REOPEN?

THE COURT: YES, YOU MAY.

[2186] BY DEFENDANT STANSBURY:

Q. SERGEANT HIGGENBOTHAM, ON THE EVENING OF SEPTEMBER THE 29TH, 1982, PRIOR TO APPROACHING THE TRAILER PARK IN QUESTION, DID YOU HAVE OCCASION TO GO TO ANY OTHER AREA WITHIN THE CITY OF POMONA?

A. YES, SIR, I DID.

Q. WHAT WAS THAT PURPOSE FOR -

A. TO LOCATE A PERSON BY THE NAME OF YUSUF, AND I DON'T RECALL THE LAST NAME.

Q. COULD YOU RECALL APPROXIMATELY WHAT TIME THAT MAY HAVE BEEN?

A. I BELIEVE IT WAS AROUND 7 O'CLOCK, 7:00 P.M. IN EVENING.

Q. UPON ARRIVAL THERE, WHAT PARTICULAR OFFICERS WERE WITH YOU AT THAT TIME?

A. OFFICER GRAY WAS WITH ME. AND OFFICER JOE LEE AND MULCAHY WERE PARTNERS.

Q. WERE ANY OTHER OFFICERS FROM ANY BRANCH OF LAW ENFORCEMENT SUMMONED, OR

DID ANY OTHER OFFICERS IN ANY OTHER BRANCHES OF LAW ENFORCEMENT ARRIVE AT THAT ADDRESS?

A. WHAT ADDRESS?

Q. WHERE YOU WERE ATTEMPTING TO FIND YUSUF.

A. YES, THEY DID.

Q. WHO WOULD THAT HAVE BEEN?

A. DETECTIVE BELL AND SERGEANT JOHNSTON THAT I RECALL.

Q. AND WAS THAT BEFORE OR AFTER ENTERING THAT ADDRESS?

[2187] A. BEFORE.

Q. BEFORE. WERE THEY CALLED?

A. YES, SIR.

Q. WAS THERE ANY PARTICULAR REASON THAT THEY WERE CALLED?

A. YES, SIR.

Q. WHAT WOULD THAT HAVE BEEN?

A. I WAS DIRECTED TO SEE IF I COULD LOCATE A YUSUF, AND I DID.

AND I MADE THE NOTIFICATION THAT I HAD LOCATED HIM.

Q. YOU HAD LOCATED HIM?

A. OR POSSIBLY LOCATED HIM.

Q. BUT THIS WAS PRIOR TO YOUR ENTRY?

A. YES, SIR.

Q. HAD YOU KNOCKED ON THE DOOR AT THAT TIME?

A. I NEVER WENT TO ANY DOOR.

Q. YOU NEVER WENT TO ANY DOOR.

HAD ANYONE ELSE KNOCKED ON THE DOOR THAT WAS WITH YOU DURING THAT PERIOD OF TIME?

A. NOT THAT I KNOW OF.

I WAS IN MY SURVEILLANCE VEHICLE WITH OFFICER GRAY.

I NEVER MADE ANY CONTACT IN ANY APARTMENT OR ANY HOUSE OR ANYTHING.

Q. UPON THE ARRIVAL OF SERGEANT JOHNSTON AND DETECTIVE BELL, WHAT OCCURRED AT THAT TIME?

[2188] A. THEY WERE ADVISED THAT WE WERE WATCHING AN APARTMENT COMPLEX WHERE WE BELIEVED THAT YUSUF WAS AT.

Q. YOU WERE WATCHING HIM AS IN A STAKE OUT?

A. YES.

[2189] Q. BUT THIS WAS ONLY SUPPOSED TO HAVE BEEN A POSSIBLE WITNESS?

A. YES, SIR.

Q. IS IT NORMAL TO STAKE OUT A POSSIBLE WITNESS IN THIS MANNER?

A. I HAVE.

Q. BUT IS IT NORMAL?

MR. BURNS: OBJECTION, YOUR HONOR. NORMAL FOR WHAT CIRCUMSTANCES? I'M NOT SURE I UNDERSTAND WHAT THE QUESTION MEANS.

THE COURT: SUSTAINED.
BY DEFENDANT STANSBURY:

Q. WOULD IT BE NORMAL POLICE PROCEDURE IF IN ATTEMPTING TO FIND A WITNESS AND YOU HAVE HIS ADDRESS AT THAT TIME TO GO TO THAT ADDRESS, STAY OUTSIDE, CONTACT SOMEONE ELSE WHO HAD ARRIVED AT THAT ADDRESS AND STAKE OUT THAT PROSPECTIVE WITNESS UNTIL THE ARRIVAL OF THE SHERIFF'S DEPARTMENT ON THE SCENE?

A. YES, SIR.

Q. SO THIS IS A VERY COMMON OCCURRENCE?

A. YES, SIR.

Q. WHO WAS IT - I BELIEVE YOU ALREADY SPECIFIED MR. JOHNSTON WENT TO THE DOOR?

A. I DON'T KNOW WHO WENT TO THE DOOR, SIR. I WASN'T AT THE APARTMENT.

Q. YOU NEVER WENT IN AT ALL?

A. NO, SIR.

Q. DO YOU KNOW WHO DID?

[2190] A. NO, SIR, I DON'T.

Q. DID YOU REMAIN UPON THE SCENE AT THAT TIME?

A. I WAS ON A STREET AWAY FROM THE APARTMENT.

Q. OH, I SEE.

WHAT TYPE OF INFORMATION HAD YOU RECEIVED RELATING TO THE ALLEGED CRIMES PRIOR TO YOUR BEING SENT TO ATTEMPT TO FIND MR. YUSUF AND MYSELF?

A. ONLY THAT A CRIME HAD OCCURRED OR MISSING PERSONS REPORT THAT A JUVENILE WAS FOUND AND HER NAME WAS ROBYN JACKSON AND LOS ANGELES SHERIFF'S HOMICIDE WAS INVESTIGATING THE CASE.

Q. WERE YOU WORKING THE PRIOR DAY OF SEPTEMBER THE 28TH, 1982?

A. THAT WOULD HAVE BEEN THE 27TH?

Q. 28TH.

A. YOU ASKED IF I WAS WORKING THE PRIOR DAY.

Q. YES, OF THE 28TH?

A. WHICH WOULD BE THE 27TH?

Q. WERE YOU WORKING ON THE 28TH?

A. I BELIEVE I WAS, I'D HAVE TO SEE A CALENDAR TO SEE EXACTLY WHAT DAY IT WAS.

Q. I BELIEVE THAT WOULD HAVE BEEN THE DAY THE CRIME WAS ALLEGEDLY COMMITTED?

A. NO, SIR. I MEAN THE DAY OF THE WEEK.

Q. SIR?

A. THE DAY OF THE WEEK, A MONDAY OR TUESDAY OR A WEDNESDAY. I WORK MONDAY THROUGH FRIDAY.

Q. THAT WOULD HAVE BEEN TUESDAY THEN?

[2191] A. YES, SIR, I DID WORK.

DEFENDANT STANSBURY: THANK YOU, LIEUTENANT JOHNSTON.

BY DEFENDANT STANSBURY:

Q. WERE YOU AT ANYTIME DURING THE DAY OF THE 28TH OF SEPTEMBER 1982 ASSIGNED IN ANY WAY TO ASSIST IN THE MISSING PERSONS REPORT RELATING TO ROBYN JACKSON?

A. NO, SIR.

Q. APPROXIMATELY WHAT TIME DID YOU BECOME AWARE OF THAT REPORT BEING ISSUED?

THE COURT: WHAT REPORT?

DEFENDANT STANSBURY: THE REPORT CONCERNING ROBYN JACKSON BEING MISSING.

MR. BURNS: YOUR HONOR, I'LL OBJECT AT THIS POINT. I DON'T THINK WE'VE ESTABLISHED A PRELIMINARY FACT THAT THE OFFICER WAS EVER AWARE OF THE REPORT BEING ISSUED AT THIS POINT IN TIME.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: PERHAPS I WAS WRONG. I MAY BE THINKING OF SOMETHING ELSE.

I WAS UNDER THE IMPRESSION THAT SERGEANT HIGGENBOTHAM HAD SPECIFIED EARLIER THAT HE WAS AWARE OF THE MISSING PERSONS REPORT RELATING TO ROBYN JACKSON.

THE COURT: I DON'T RECALL THAT TESTIMONY IF THAT'S THE CASE, MR. STANSBURY.

I THINK MR. BURNS IS OBJECTING TO THE FACT HE'S BEEN ORDERED BY OR DIRECTED BY SOME OTHER OFFICER TO STAKE OUT, PICK UP A WITNESS OR WHATEVER. BUT I DON'T [2192] KNOW THAT WE'VE ESTABLISHED THAT HE RECEIVED OR READ OR HEARD A REPORT OF THE INCIDENT ITSELF.

YOU MAY WISH TO INQUIRE.

DEFENDANT STANSBURY: I'M SORRY, YOUR HONOR.

I DIDN'T -

MR. DAUGHERTY: INQUIRE.

BY DEFENDANT STANSBURY:

Q. WERE YOU AT ANYTIME ON THAT DATE OR DID YOU BECOME AWARE OF A MISSING PERSONS REPORT RELATING TO ROBYN JACKSON?

A. YES, SIR.

Q. APPROXIMATELY WHAT TIME WAS IT THAT YOU BECAME AWARE OF THAT REPORT?

A. WHEN I REPORTED FOR DUTY. IT WOULD HAVE BEEN THE MORNING OF THE 29TH.

Q. SO YOU WERE NOT ACTUALLY AWARE OF IT UNTIL THE 29TH OF SEPTEMBER 1982?

A. THAT'S CORRECT.

Q. WHAT TIME WOULD THAT HAVE BEEN?

A. I NORMALLY CAME IN ABOUT EIGHT O'CLOCK IN THE MORNING, SO RIGHT AROUND THAT TIME.

Q. YOU WORKED FROM 8:00 A.M. UNTIL WHAT TIME?

A. NORMAL SCHEDULE IS EIGHT TO 5:00 P.M.

DEFENDANT STANSBURY: THANK YOU.

I HAVE NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

THE COURT: MR. BURNS?

[2193] CROSS-EXAMINATION +

BY MR. BURNS:

Q. MR. HIGGENBOTHAM, WHEN YOU INDICATE THAT YOU WERE AWARE OF A MISSING PERSONS REPORT, WERE YOU AWARE THAT THE INCIDENT HAD BEEN REPORTED TO THE POLICE DEPARTMENT?

A. YES, SIR.

Q. HAD YOU ACTUALLY READ ANY TYPED COPY OF ANY POLICE REPORT WHICH MIGHT HAVE

BEEN LABELED MISSING PERSONS REPORT ON THAT DATE?

A. NO, SIR.

MR. BURNS: NO FURTHER QUESTIONS.

DEFENDANT STANSBURY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

YOU ARE FREE TO GO,

THE WITNESS: THANK YOU.

MR. DAUGHERTY: MAY WE HAVE A SHORT TIME TO CONFER?

THE COURT: YES.

MR. DAUGHERTY: I BELIEVE WE'RE GOING TO CALL DEFECTIVE BELL NEXT, YOUR HONOR.

THE COURT: IS DETECTIVE BELL HERE?

MR. BURNS: YES, YOUR HONOR.

WE ALSO HAVE A DETECTIVE WILLIE MILLER HERE AND A RESERVE OFFICER GRAY HERE.

AND AT THIS POINT IN TIME, IS THE DEFENSE INTERESTED IN HAVING THEM AVAILABLE?

MR. DAUGHERTY: I DON'T THINK IT'S GOING TO BE [2194] NECESSARY TO HAVE WILLIE MILLER OR DETECTIVE GRAY, IS IT, MR. STANSBURY?

DEFENDANT STANSBURY: I WOULD THINK THAT IT WOULD BE.

MR. DAUGHERTY: IF SO, WE MAY WANT TO CALL WILLIE MILLER RIGHT NOW.

DEFENDANT STANSBURY: I WOULD NOT WANT TO CALL WILLIE MILLER RIGHT NOW BECAUSE OF THE FACT THAT I BELIEVE WILLIE MILLER'S TESTIMONY SUBSTANTIATES SOMETHING ELSE FURTHER DOWN THE LINE. I BELIEVE THAT DETECTIVE BELL AND PERHAPS -

THE COURT: CALL DETECTIVE BELL.

MR. BURNS: THAT'S FINE, YOUR HONOR.

YOUR HONOR, AT THIS TIME IT WOULD BE MY INTENTION TO RELEASE WILLIE MILLER AND THE OTHER PEOPLE AND REQUEST THEM TO COME BACK TOMORROW.

THE COURT: LET'S SEE HOW LONG HE TAKES WITH DETECTIVE BELL. LET'S SEE WHERE WE GO.

DARLENE BELL, +
A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

YOU DO SOLEMNLY SWEAR WHAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

[2195] THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESS STAND.

STATE YOUR NAME FOR THE RECORD AND SPELL YOUR LAST NAME.

THE WITNESS: DARLENE BELL, B-E-L-L.

THE CLERK: IS THAT DARLENE, D-A-R-L-E-N-E?

THE WITNESS: YES, IT IS.

THE COURT: WHO'S GOING TO CONDUCT THIS INVESTIGATION?

MR. DAUGHERTY: MR. ROBUSTO IS GOING TO CONDUCT THIS EXAMINATION.

THE COURT: MR. ROBUSTO, YOU MAY PROCEED.

MR. BURNS: EXCUSE ME, YOUR HONOR. I HATE TO BRING A SMALL TECHNICALITY TO THE COURT'S ATTENTION.

MY UNDERSTANDING IN THIS RULE IS THAT WE HAVE AT THIS POINT TWO CO-COUNSEL AND ADVISORY COUNSEL. AND UNLESS THERE'S BEEN SOME CHANGE IN THE STRUCTURE OF THE SITUATION, IT'S SOMEWHAT OF AN UNUSUAL PROCEDURE.

THE COURT: WE'RE GOING TO CUT THROUGH THE RED TAPE, AND I'M GOING TO ALLOW HIM TO PROCEED. AND LET THE CHIPS FALL WHERE THEY MAY.

YOU MAY PROCEED, MR. ROBUSTO.

THE COURT: MR. ROBUSTO, YOU MAY PROCEED.

MR. ROBUSTO: THANK YOU, YOUR HONOR. MAY I JUST HAVE A MOMENT, PLEASE IN.

THE COURT: THAT'S WHAT I WAS TRYING TO AVOID.

[2196] DIRECT EXAMINATION +

BY MR. ROBUSTO:

Q. GOOD AFTERNOON DETECTIVE BELL; HOW ARE YOU?

A. FINE, THANK YOU.

Q. DIRECTING YOUR ATTENTION TO SEPTEMBER 29TH, 1982, WERE YOU EMPLOYED BY THE BALDWIN PARK POLICE DEPARTMENT?

A. YES, I WAS.

Q. IN WHAT CAPACITY WERE YOU EMPLOYED ON THAT DATE?

A. I WAS A DETECTIVE WORKING THE NABS TEAM.

Q. I'M SORRY?

A. I WAS A DETECTIVE WORKING THE NABS TEAM; NARCOTICS AND BURGLARY SUPPRESSION TEAM.

Q. DID YOU HAVE AN OCCASION TO BE AT THE POMONA POLICE DEPARTMENT AT APPROXIMATELY 11:30?

A. YES.

Q. AND WHAT WAS YOUR PURPOSE IN BEING THERE?

A. TWO ASSIST LOS ANGELES HOMICIDE - EXCUSE ME, THE SHERIFF'S HOMICIDE.

Q. AND WITH RESPECT TO WHAT CASE?

A. STANSBURY.

Q. NOW, WHEN YOU WENT TO THE BALDWIN PARK - STRIKE THAT.

WHEN YOU WENT TO THE POMONA POLICE DEPARTMENT YOU WENT THERE WITH THE INTENTION OF INTERVIEWING MR. STANSBURY.

IS THAT CORRECT?

[2197] A. NO.

Q. YOU HAD NO INTENTIONS OF SEEING MR. STANSBURY THAT EVENING?

A. NO.

Q. WHAT WAS YOUR PURPOSE IN BEING AT THAT FACILITY AT THAT TIME?

A. I WAS TOLD TO TAKE LIEUTENANT JOHNSTON AND THE TWO OTHER HOMICIDE OFFICERS TO POMONA.

SO I WAS JUST TRANSPORTATION FOR THEM.

Q. AND YOU DROVE THEM TO THAT FACILITY?

A. YES.

Q. AND YOU WENT INTO THAT FACILITY YOURSELF?

A. YES.

Q. DID YOU HAVE ANY REASON TO REMAIN AT THAT FACILITY AFTER DROPPING OFF THE OTHER OFFICERS?

A. YES. THEY NEEDED A WAY BACK.

Q. SO YOU HAD TO TAKE THEM THERE AND YOU HAD TO TAKE THEM BACK?

A. YES.

Q. AT ANYTIME ON THAT PARTICULAR DAY, SEPTEMBER 29, 1982, DID YOU GO TO THE RESIDENCE OF MR. STANSBURY?

A. NO, I DIDN'T.

Q. HAD YOU HAD ANY PRIOR CONVERSATIONS WITH MR. STANSBURY PRIOR TO SEPTEMBER 29, 1982 AT APPROXIMATELY 11:00 P.M.?

A. NO.

Q. DID YOU HAVE AN INTERVIEW WITH MR. STANSBURY [2198] THAT EVENING?

A. I SAT IN ON AN INTERVIEW, YES.

Q. DID YOU ASK MR. STANSBURY ANY QUESTIONS?

A. NO, I DID NOT.

Q. YOU WERE PRESENT DURING A CONVERSATION WITH MR. STANSBURY AND SOMEBODY ELSE?

A. YES.

Q. AND WHO IS THE OTHER PERSONS AT THE INTERVIEW?

A. LIEUTENANT JOHNSTON.

Q. AND MR. STANSBURY?

A. AND MR. STANSBURY.

Q. DID YOU - WERE YOU AWARE OF MR. STANSBURY PRIOR TO ENTERING THE INTERVIEW ROOM?

A. YES.

I WAS TOLD OR I WAS PRESENT WHEN LIEUTENANT JOHNSTON WAS TOLD THERE WAS SOMEONE ELSE DOWNSTAIRS. SO I WAS UPSTAIRS AND WE WALKED DOWNSTAIRS, BUT ONLY THAT.

Q. PRIOR TO WALKING DOWNSTAIRS AT THE FACILITY, WHERE WERE YOU?

A. I WAS UPSTAIRS AT THE POMONA POLICE DEPARTMENT.

Q. YOU WERE UPSTAIRS.

WERE YOU DOING ANYTHING IN SPECIFIC?

A. YES.

WE WERE - WELL, I WAS STANDING OUTSIDE OF A ROOM WHERE THERE WAS A BLACK MAN IN THERE.

Q. A BLACK MAN WAS IN AN INTERVIEW ROOM?

[2199] A. YES, UH-HUH.

Q. AND WAS THAT PARTICULAR MAN BEING INTERVIEWED TO YOUR KNOWLEDGE?

A. NOT RIGHT AT THAT TIME.

Q. SO THE INTERVIEW WITH RESPECT TO THE BLACK MAN WAS NOT BEING CONDUCTED AT THE TIME THAT YOU WERE OUTSIDE OF THAT ROOM?

A. RIGHT.

Q. COULD YOU HEAR WHAT WAS TAKING PLACE INSIDE THE ROOM?

A. IF I RECALL RIGHT, JUST EVERYBODY WAS JUST STANDING AROUND.

Q. COULD YOU SEE INTO THE INTERVIEW ROOM WHERE THE BLACK MAN WAS?

A. YES. THE DOOR WAS OPEN.

Q. THE DOOR WAS OPEN AND WHO WAS IN THAT ROOM?

A. THERE WAS OFFICER OR EXCUSE ME INVESTIGATOR RIORDAN, PATTERSON AND LIEUTENANT JOHNSTON.

Q. AND YOU WERE OUTSIDE THAT ROOM?

A. RIGHT.

Q. AND THE INTERVIEW HAD NOT STARTED; IS THAT CORRECT?

A. NOT THAT I CAN RECALL, NO.

Q. WERE YOU AT THE FACILITY WHEN THE BLACK MAN ARRIVED?

A. YES.

Q. DO YOU RECALL WHAT TIME YOU ARRIVED AT THE FACILITY?

[2200] A. NO, I DON'T.

Q. IS THAT A NO, I DON'T?

A. POSSIBLY NINE, 9:30. I CAN'T BE CERTAIN.

Q. DO YOU RECALL WHAT TIME THE BLACK MAN ARRIVED AT THE FACILITY?

A. THE SAME TIME I DID.

Q. AND SO YOU TRANSPORTED THE BLACK MAN TO THE FACILITY?

A. YES.

Q. THAT WAS WITH LIEUTENANT JOHNSTON?

A. RIGHTS.

Q. THAT WAS AFTER - HOW LONG AFTER ARRIVING AT THE FACILITY DID YOU AND MR. JOHNSTON GO DOWNSTAIRS TO START TALKING TO MR. STANSBURY?

A. I'LL HAVE TO GUESSTIMATE 15, 20 MINUTES. I'M NOT SURE.

Q. THE BLACK MAN WAS THERE APPROXIMATELY 15 MINUTES BEFORE YOU WENT DOWN?

A. APPROXIMATELY. I'M NOT SURE.

Q. AN INTERVIEW WITH THE BLACK MAN WAS NOT BEING CONDUCTED PRIOR TO YOU GOING DOWN AND SITTING IN ON AN INTERVIEW WITH MR. STANSBURY; IS THAT CORRECT?

A. NOT THAT I CAN REMEMBER, NO.

Q. WAS THERE - DO YOU RECALL WHAT TIME THE INTERVIEW STARTED WITH MR. STANSBURY?

A. APPROXIMATELY ABOUT LL [sic] O'CLOCK, I BELIEVE.

Q. DO YOU RECALL HOW LONG THE INTERVIEW LASTED?

A. 20, 25 MINUTES, POSSIBLY.

[2201] Q. AND WAS THERE ANYBODY ELSE IN THE ROOM?

A. JUST WHOEVER I STATED.

Q. ANYBODY ELSE COME INTO THE ROOM AT ANYTIME?

A. NO.

Q. NOBODY ELSE CAME INTO THAT ROOM?

A. NO.

Q. WERE YOU IN THE ROOM THE ENTIRE TIME?

A. YES.

Q. YOU NEVER LEFT THE ROOM?

A. OH, I LEFT THE ROOM - I'M SORRY AT ONE POINT, I DID.

Q. DID YOU EVER GO BACK INTO THAT ROOM?

A. NO.

Q. NOW, LIEUTENANT JOHNSTON WAS THE PERSON THAT WAS CONDUCTING THE INTERVIEW; IS THAT CORRECT?

A. RIGHT.

Q. DID LIEUTENANT JOHNSTON IN YOUR PRESENCE ADVISE MR. STANSBURY OF HIS MIRANDA RIGHTS?

A. NO.

Q. DID MR. JOHNSTON ASK QUESTIONS OF MR. STANSBURY?

A. YES.

Q. AND WHAT KIND OF - WAS MR. STANSBURY GIVING SPECIFIC ANSWERS BACK TO MR. JOHNSTON?

A. HE WOULD ANSWER HIS QUESTION.

Q. NOW, DURING THE TIME OF THIS INTERVIEW, WERE YOU TAKING NOTES?

A. NO.

[2202] Q. DID YOU TAKE ANY NOTES OF THE INTERVIEW WITH MR. STANSBURY?

A. NO.

Q. WAS THERE A TAPE RECORDING OF THE INTERVIEW WITH MR. STANSBURY?

A. NO.

Q. AT A LATER TIME, DID YOU WRITE DOWN ANY TYPE OF NOTES WITH RESPECT TO THE INTERVIEW?

A. NO.

Q. DID YOU PREPARE ANY TYPE OF POLICE REPORT WITH RESPECT TO THE INTERVIEW?

A. NO.

Q. NOW, YOU HAD INFORMATION ABOUT THE ALLEGED MURDER OF ROBYN JACKSON; IS THAT CORRECT?

A. I'M SORRY, WHAT DID YOU SAY?

Q. AT THE TIME OF THIS INTERVIEW, YOU HAD INFORMATION ABOUT THE ALLEGED MURDER OF ROBYN JACKSON; IS THAT CORRECT?

A. YES.

Q. WHEN DID YOU FIRST ACQUIRE THIS INFORMATION?

A. THE MORNING OF THE 29TH.

Q. APPROXIMATELY WHAT TIME?

A. EIGHT O'CLOCK WHEN I FIRST CAME TO WORK.

Q. THE NORMAL SHIFT WAS EIGHT TO FIVE?

A. YES.

Q. AND IT'S OBVIOUS YOU WORKED OVERTIME?

A. YES.

Q. WHAT INFORMATION DID YOU RECEIVE WHEN YOU [2203] WENT INTO THE BALDWIN PARK POLICE DEPARTMENT IN REPORTING FOR WORK?

A. ONLY THAT WE HAD A SMALL CHILD THAT WAS KIDNAPPED AND THEY HAD FOUND HER MURDERED AND THAT WAS BASICALLY IT.

Q. AND HOW DID YOU ACQUIRE THAT INFORMATION?

A. FROM SERGEANT HIGGENBOTHAM.

Q. WERE YOU WORKING WITH MR. HIGGENBOTHAM ON THAT DATE?

A. YES. HE IS MY SERGEANT.

Q. WAS HE YOUR SUPERVISOR ON THAT DATE?

A. YES.

Q. YOU WERE WORKING WITH HIM PERSONALLY?

A. NOT PERSONALLY. MY PARTNER WAS JOE LEE. BUT SERGEANT HIGGENBOTHAM WAS MY SUPERVISOR.

Q. DID YOU WORK ON THAT PARTICULAR CRIME PRIOR TO THE INTERVIEW WITH MR. STANSBURY?

A. NO.

Q. DID YOU -

A. OH, EXCUSE ME. YES, I DID.

Q. AND WHAT DID YOU DO?

A. I WAS IN CHARGE OF APPROXIMATELY FIVE OR SIX RESERVE OFFICERS THAT WERE TOLD TO GO OUT AND RECHECK THE NEIGHBORHOOD.

Q. WHEN YOU SAY YOU WERE IN CHARGE, YOU WERE SUPERVISING FIVE OR SIX OTHER OFFICERS?

A. YES.

[2204] Q. AND THOSE ARE RESERVE OFFICERS?

A. YES.

Q. YOU DIRECTED THEM TO DO CERTAIN ACTS?

A. YES.

Q. WITH RESPECT TO THE INVESTIGATION OF THE MURDER; IS THAT CORRECT?

A. YES.

Q. AND YOU TOLD THEM TO GO TO PHELAN STREET?

A. I WAS TOLD BY SERGEANT HIGGENBOTHAM TO GO TO PHELAN STREET JUST TO KIND OF SUPERVISE THE CHECK OF THE AREA.

Q. SO YOU CANVASSED THE AREA?

A. RIGHTS.

Q. AND DID YOU DO THAT PERSONALLY AS WELL AS THE OTHER OFFICERS?

A. NO.

I MORE OR LESS JUST STOOD AROUND AND MADE SURE EVERYTHING WAS GOING OKAY.

I THINK I CHECKED A COUPLE HOUSES, BUT THERE WASN'T ANYBODY HOME.

Q. NOW, PRIOR TO GOING TO - STRIKE THAT.

WHAT TIME DID YOU GO OUT TO PHELAN STREET?

A. APPROXIMATELY SIX O'CLOCK IN THE EVENING.

Q. SO FROM 8:00 A.M. UNTIL 6:00 P.M., IS IT YOUR TESTIMONY THAT YOU DID NOTHING WITH RESPECT TO THE INVESTIGATION OF THIS CRIME?

A. THAT'S TRUE.

Q. DID YOU HAVE, PRIOR TO GOING TO PHELAN STREET [2205] AT 6:00 P.M., DID YOU HAVE ANY INFORMATION OTHER THAN WHAT YOU PREVIOUSLY RELATED ABOUT THE FACTS OF THIS CASE?

A. NO.

Q. HAD YOU TALKED TO OTHER OFFICERS ABOUT THE ABDUCTION AND THE MURDER?

A. NO.

Q. DID ANYBODY AT BALDWIN PARK TALK TO YOU ABOUT THE ABDUCTION AND THE MURDER

PRIOR TO YOU GOING TO PHELAN STREET AT APPROXIMATELY 6:00 P.M.?

A. ONLY THINGS THAT I HEARD IN THE HALLWAY. BECAUSE I WAS PERFORMING MY OWN DUTIES THAT DAY. I HAD A CASE LOAD OF MY OWN.

Q. WHAT DID YOU HEAR IN THE HALLWAY?

A. JUST BASICALLY THAT THE LITTLE GIRL WAS FOUND. SHE WAS KIDNAPPED. BASICALLY WHAT I'D HEARD EARLIER IN THE MORNING.

Q. WAS THERE ANY TALK ABOUT A POTENTIAL SUSPECT?

A. NO.

Q. NO CONVERSATION ABOUT A POTENTIAL SUSPECT AT ALL?

A. NO.

Q. WAS THERE - DID YOU HEAR ANYTHING ABOUT AN ICE CREAM TRUCK DRIVER?

A. NOT AT THAT TIME, NO.

Q. AT WHAT POINT IN TIME DID YOU HEAR ABOUT AN ICE CREAM TRUCK DRIVER?

A. WHEN I WAS TOLD TO TAKE THE HOMICIDE GUYS OUT TO POMONA.

[2206] Q. THAT WOULD BE LIEUTENANT JOHNSTON?

A. RIGHT.

Q. AND IS THAT MR. RIORDIAN [sic]?

A. YES, AND MR. PATTERSON.

Q. AT THAT POINT IN TIME, YOU HAD INFORMATION ABOUT ICE CREAM TRUCK DRIVER?

A. YES.

Q. AND YOU RECEIVED THAT INFORMATION FROM THE INVESTIGATORS JOHNSTON, RIORDAN AND PATTERSON?

A. YES.

Q. AND WHAT DID THEY TELL YOU?

A. ONLY THAT I WAS SUPPOSED TO TAKE THEM OUT TO POMONA. THAT THEY WERE GOING TO LOOK FOR A POSSIBLE WITNESS THAT HAD BEEN AN ICE CREAM TRUCK DRIVER, THAT HE MIGHT HAVE BEEN IN THE AREA.

Q. DID THEY RELAY ANY INFORMATION TO YOU THAT THEY HAD ABOUT FACTS INVOLVING THIS PARTICULAR CASE?

A. NO.

Q. ABOUT A POTENTIAL SUSPECT?

A. NO.

Q. SO THE ONLY INFORMATION THAT YOU HAD ABOUT THIS WAS THAT THEY HAD A POSSIBLE WITNESS?

A. YES.

Q. WHO WAS AN ICE CREAM TRUCK DRIVER?

A. YES.

Q. DID THEY TELL YOU THE PHYSICAL DESCRIPTION OF THIS ICE CREAM TRUCK DRIVER?

A. BASICALLY I THINK HE WAS BLACK IS ALL I CAN [2207] REMEMBER.

Q. IT WAS ONE ICE CREAM TRUCK DRIVER?

A. YES.

Q. YOUR INTENTION WAS TO DRIVE THEM OUT TO INTERVIEW ONE DRIVER?

A. RIGHT.

Q. YOU HAD NO OTHER INFORMATION?

A. NOT AT THAT TIME, NO.

Q. NO OTHER INFORMATION ABOUT ANOTHER PERSON?

A. NOT AT THAT TIME, I DON'T REMEMBER.

Q. AT SOME POINT IN TIME YOU DID?

A. YES.

Q. WHEN WAS THAT?

A. AFTER WE GOT TO THE LOCATION, LIEUTENANT JOHNSTON ASKED SERGEANT HIGGENBOTHAM AND HIS PARTNER AND DETECTIVE JOE LEE AND HIS PARTNER TO GO TO A TRAILER PARK AND PICK UP A GENTLEMAN.

Q. DID THEY HAVE A PHYSICAL DESCRIPTION OF THAT GENTLEMAN?

A. I DON'T REMEMBER IF THEY GAVE HIM ONE OR NOT.

Q. DID THEY GIVE YOU ONE?

A. NO.

[2208] Q. DID YOU OVERHEAR THEM GIVING MR. LEE A PHYSICAL DESCRIPTION OF THE WITNESS?

A. NO.

Q. WAS THERE ANYTHING SAID - ANYTHING ELSE SAID?

A. I'M SORRY.

Q. WAS THERE ANYTHING ELSE SAID TO MR. LEE?

A. NOT THAT I CAN REMEMBER.

Q. IN CANVASSING THE PHELAN AREA, PHELAN STREET AREA, DID YOU HAVE ANY INFORMATION BEFORE YOU WENT OUT TO THAT PARTICULAR AREA?

A. ONLY THE INFORMATION I TOLD YOU.

Q. DID YOU HAVE INFORMATION THAT'S WHERE THE VICTIM RESIDED?

A. YES.

Q. DID YOU HAVE AN ADDRESS WHERE SHE RESIDED?

A. YES.

Q. DID YOU GO TO THAT ADDRESS?

A. I WAS TOLD NOT TO.

Q. AND WHAT KINDS OF QUESTIONS WERE YOU ASKING?

A. I DIDN'T ASK ANY QUESTIONS.

THE PEOPLE - THE HOUSES THAT I WENT TO, I THINK A COUPLE SPOKE SPANISH, AND THE OTHER ONES WEREN'T HOME.

Q. DID YOU INFORM YOUR EMPLOYEES OR THE PEOPLE THAT YOU WERE SUPERVISING WHAT TYPE OF QUESTIONS TO ASK?

A. JUST BASICALLY IF THEY HAD SEEN ANYTHING.

Q. WHEN YOU SAY ANYTHING?

[2209] A. ANYTHING SUSPICIOUS ON THE NIGHT THAT SHE DISAPPEARED.

Q. DID YOU HAVE ANY INFORMATION AS TO WHAT YOU WERE ATTEMPTING TO SOLICIT FROM THE NEIGHBORHOOD, WHAT YOU WENT TO LOOK FOR?

A. NOT THAT I CAN REMEMBER.

Q. DID YOU HAVE A PHOTOGRAPH OF THE VICTIM?

A. NO.

Q. DID YOU HAVE A PHYSICAL DESCRIPTION OF THE VICTIM?

A. I DON'T REMEMBER IF I DID OR NOT.

Q. DID YOU HAVE A VICTIM'S NAME?

A. I'M NOT SURE IF I DID.

Q. DID YOU KNOW THE TIME THAT THE VICTIM WAS ALLEGEDLY ABDUCTED?

A. I DON'T REMEMBER MUCH OF WHAT HAPPENED AT THAT TIME. I DON'T REMEMBER IF I DID OR NOT.

Q. HAD YOU REVIEWED ANY POLICE REPORTS PRIOR TO GOING OUT INTO THE FIELD ON THIS CANVAS OF THE NEIGHBORHOOD?

A. NO, I DIDN'T.

Q. HAD YOU TALKED TO LIEUTENANT JOHNSTON, SERGEANT PATTERSON OR SERGEANT RIOR-DAN?

A. I THINK I WAS ONLY INTRODUCED TO THEM, AND THAT WAS IT. I DON'T REMEMBER.

Q. DID ANY OF THE PEOPLE THAT YOU WERE SUPERVISING HAVE ANY INFORMATION THAT YOU TURNED OVER TO THE HOMICIDE DETECTIVES ON THIS CASE?

[2210] A. I'M SORRY. WHAT DID YOU SAY?

Q. YOU WERE SUPERVISING A GROUP OF PEOPLE THAT WERE CANVASSING THE NEIGHBORHOOD.

ISN'T THAT CORRECT?

A. YES.

Q. THOSE PEOPLE WERE OUT IN THE FIELD FOR A PERIOD OF TIME UNDER YOUR SUPERVISION.

IS THAT CORRECT?

A. YES.

Q. HOW LONG WERE THEY OUT IN THE FIELD?

A. APPROXIMATELY AN HOUR AND A HALF OR TWO HOURS.

Q. THEY CANVASSED THE STREET AND THE AREA.

ISN'T THAT CORRECT?

A. YES.

Q. DID THEY TURN OVER ANY INFORMATION TO YOU ABOUT WHAT THEY HAD FOUND OUT WITH RESPECT TO THE CANVASSING?

A. NOT THAT I REMEMBER, NO.

Q. NO INFORMATION WAS ACQUIRED AS A RESULT OF YOUR EFFORTS AND BEING OUT THERE WITH FIVE OR SIX PEOPLE FOR AN HOUR AND A HALF?

A. NOTHING NEW.

IF IT WAS, I WOULD HAVE GIVEN IT TO LIEUTENANT JOHNSTON.

Q. YOU SAID NOTHING NEW.

DID YOU HAVE ANY OTHER INFORMATION BESIDES WHAT YOU'VE INDICATED PRIOR TO GOING OUT INTO THE FIELD?

[2211] A. I DON'T REMEMBER IF I DO OR NOT.

I DON'T REMEMBER WHAT I WAS TOLD ABOUT THE CASE. IT WAS TWO YEARS AGO. I JUST CAN'T RECALL.

Q. SO YOUR MEMORY IS VERY VAGUE. IS THAT YOUR TESTIMONY?

A. AT THAT POINT IN TIME, YES.

Q. DETECTIVE BELL, DURING THE INTERVIEW WITH MR. STANSBURY, DID HE EVER ASK YOU ABOUT ANY CIGARETTES?

A. NOT THAT I CAN RECALL, NO.

Q. DID HE HAVE ANY COMPLAINTS ABOUT BEING -

A. NO.

Q. DID HE ASK TO LEAVE?

A. NO.

Q. COULD HE HAVE LEFT AT THAT POINT IN TIME?

A. AS FAR AS I WAS CONCERNED, HE COULD.

Q. COULD YOU DESCRIBE THE INTERVIEW ROOM THAT YOU WERE IN WITH MR. STANSBURY AND LIEUTENANT JOHNSTON?

A. THE DIMENSIONS AND SO FORTH AND SO ON? I DON'T KNOW HOW BIG THE ROOM WAS. THERE WAS A TABLE. I BELIEVE FOUR CHAIRS. I WOULD SAY PROBABLY THE ROOM WAS, SAY, FROM THE WALL TO MAYBE THE STEP, AND FROM HERE OVER TO THE WALL, HOWEVER LONG THAT IS.

Q. WAS THERE ONE ROOM IN ENTERING?

A. YES.

Q. WAS THERE ANY OTHER DOORS?

A. NO.

Q. YOU WENT INTO THE INTERVIEW ROOM AT THE SAME [2212] TIME AS LIEUTENANT JOHNSON DID?

A. YES.

Q. WAS MR. STANSBURY ALREADY IN THE ROOM?

A. YES.

Q. AND WAS THERE ANYBODY ELSE IN THE ROOM WHEN YOU ARRIVED BESIDES MR. STANSBURY? —

A. NOT THAT I CAN REMEMBER, NO.

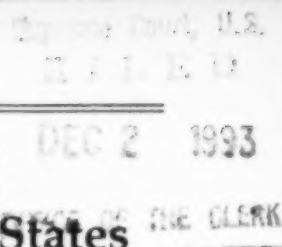
THE COURT: MR. ROBUSTO, HOW MUCH MORE TIME DO YOU THINK YOU WILL HAVE ON THIS OFFICER?

MR. ROBUSTO: I HAVE A WAYS TO GO, YOUR HONOR.

THE COURT: WE'LL BE IN RECESS UNTIL 10:30.

YOU'RE EXCUSED.

(AT 4:35 P.M., AN ADJOURNMENT WAS TAKEN UNTIL THURSDAY, NOVEMBER 1, 1984, AT 10:30 A.M.)



In The
Supreme Court of the United States

October Term, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of The
State Of California

JOINT APPENDIX
VOLUME II, pages 247-514

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Certiorari Granted November 1, 1993

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[2213] THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, MR. STANSBURY ARE PRESENT.

OFFICER BELL IS ON THE STAND.

I BELIEVE MR. ROBUSTO WAS EXAMINING.

AND YOU MAY PROCEED, SIR.

MR. ROBUSTO: THANK YOU, YOUR HONOR.

DARLENE BELL, +
WITNESS, RESUMES STAND AND TESTIFIES FURTHER
AS FOLLOWS:

DIRECT EXAMINATION + (CONT'D)
BY MR. ROBUSTO:

Q. DETECTIVE BELL, WHEN WE LEFT OFF YESTERDAY. WE WERE TALKING ABOUT YESTERDAY IF THERE WAS ANYBODY IN THE INTERVIEW ROOM WITH YOU, MR. STANSBURY AND MR. JOHNSTON. YOU INDICATED NO.

IS THAT CORRECT?

A. RIGHT.

Q. YOU WERE PRESENT DURING THE ENTIRE CONVERSATION BEFORE - STRIKE THAT.

AT SOME POINT IN TIME YOU LEFT THE INTERVIEW ROOM.

[2214] IS THAT CORRECT?

A. YES.

Q. DO YOU REMEMBER WHAT TYPE OF QUESTIONS LIEUTENANT JOHNSTON WAS ASKING OF MR. STANSBURY?

A. YES.

Q. AND WHAT TYPE OF QUESTIONS WAS HE ASKING?

A. HE ASKED HIM HIS NAME, WHERE HE LIVED, TALKED ABOUT HIS EMPLOYMENT, HE HAD AN ICE CREAM TRUCK, THE DESCRIPTION OF IT, THE ROUTE THAT HE USED IN BALDWIN PARK, PEOPLE THAT MR. STANSBURY LIVED WITH, VEHICLES THAT WERE USED THAT HE HAD ACCESS TO TO [sic] USE.

THEY TALKED ABOUT ROBYN, THERE WAS A PHOTOGRAPH SHOWN, AND THEY TALKED ABOUT HER.

THEY TALKED ABOUT MR. STANSBURY'S ARREST RECORD.

Q. NOW, PRIOR TO ASKING ANY QUESTIONS OF MR. STANSBURY, DID LIEUTENANT JOHNSTON INDICATE TO MR. STANSBURY THE PURPOSE OF HAVING MR. STANSBURY INTERVIEWED?

A. YES.

Q. WHAT DID MR. JOHNSTON SAY?

A. THAT HE POSSIBLY COULD BE A WITNESS.

Q. NOW, YOU INDICATED THAT MR. JOHNSTON WAS ASKING SPECIFIC QUESTIONS.

IS THAT CORRECT?

A. YES. WAS ASKING HIM QUESTIONS.

Q. YES.

WAS MR. STANSBURY ANSWERING THOSE QUESTIONS SPECIFICALLY AND THEN STOPPING?

[2215] A. NO.

Q. WAS MORE OF A NARRATIVE TYPE?

A. YES.

Q. NOW, YOU'VE INDICATED THAT YOU HAD NO INFORMATION ABOUT THIS CASE PRIOR TO THAT INTERVIEW.

IS THAT CORRECT?

A. I HAD A LITTLE BIT OF INFORMATION.

Q. BUT NOTHING REAL FACTUAL.

IS THAT CORRECT?

A. NO.

Q. MR. STANSBURY TALKED ABOUT A GAS STATION.

IS THAT CORRECT?

A. YES.

Q. YOU WERE PRESENT?

A. YES.

Q. DO YOU REMEMBER WHAT MR. STANSBURY SAID ABOUT A GAS STATION?

A. YES.

Q. WOULD YOU RELATE THAT?

A. THAT HE STOPPED AT A SERVICE STATION ON ARROW HIGHWAY; THAT THE SERVICE STATION WAS THE TYPE THAT WAS THE SERVE YOURSELF.

THE CASHIER'S BOOTH WAS BY THE STREET, AND HE THOUGHT IT WAS A SAV-MOR SERVICE STATION.

Q. NOW, YOU REMEMBER THAT SPECIFICALLY?

A. YES, I DO.

Q. NOW, DID YOU REVIEW ANY POLICE REPORTS BEFORE TESTIFYING TODAY?

[2216] A. YES, I DID.

Q. WAS THAT LIEUTENANT JOHNSTON'S POLICE REPORT?

A. YES, IT WAS.

Q. AND DID YOU REVIEW THAT STATEMENT THAT WAS IN THAT PARTICULAR POLICE REPORT?

A. YES.

Q. NOW, DID YOU HAVE INFORMATION THAT AT SOME POINT IN TIME ON THAT PARTICULAR EVENING, SEPTEMBER 29TH, 1982, THAT MR. STANSBURY WAS CHARGED WITH A CRIME?

A. I'M SORRY. I DON'T UNDERSTAND WHAT YOU'RE SAYING.

Q. WAS MR. STANSBURY ARRESTED THAT EVENING?

A. WHICH EVENING?

Q. SEPTEMBER 29TH, 1982, THE EVENING THAT WE'RE TALKING ABOUT.

A. YES.

Q. AND YOU KNEW HE WAS ARRESTED?

A. YES.

Q. HE WAS ARRESTED FOR THE MURDER OF ROBYN JACKSON.

IS THAT CORRECT?

A. YES.

Q. AND ON OCTOBER 4TH, YOU WENT TO A PARTICULAR GAS STATION.

ISN'T THAT CORRECT?

MR. BURNS: OBJECTION, YOUR HONOR. BEYOND THE SCOPE OF THEIR MOTION. NOT RELEVANT TO THE QUESTION AT HAND.

[2217] THE COURT: MR. ROBUSTO, DO YOU WISH TO BE HEARD?

MR. ROBUSTO: YES, I DO, YOUR HONOR.

PART OF THE MOTION, YOU HAVE A MIRANDA ISSUE BEFORE THE COURT.

THE ISSUE IS WHETHER OR NOT MR. STANSBURY WAS A SUSPECT AND WHETHER OR NOT HE WAS MIRANDIZED AT THE APPROPRIATE TIME.

THERE IS ALSO COROLLARY TYPE ISSUE THAT STEMS FROM THIS PARTICULAR MOTION IN THAT IF THIS IS NOT A PROPER INTERVIEW, AND IF MR. STANSBURY SHOULD HAVE BEEN MIRANDIZED AT AN APPROPRIATE TIME, FRUITS OF THIS PARTICULAR INTERVIEW, WHICH WERE ESTABLISHED BY THE POLICE AGENCIES INVOLVED, SHOULD NOT BE ADMITTED INTO EVIDENCE.

WE'RE ASKING THAT NOT ONLY THE STATEMENTS BE SUPPRESSED BUT THE FRUITS OF THAT STATEMENT.

MR. BURNS: YOUR HONOR, AT THIS POINT THERE WAS NO MOTION, IF MY RECOLLECTION SERVES ME, DIRECTED TO ANY FRUITS.

THE ONLY MOTION ORIGINALLY FILED BY THE DEFENSE WAS A MOTION TO SUPPRESS MR. STANSBURY'S STATEMENT.

THAT WAS WHAT WAS REQUESTED IN THE ORIGINAL MOVING PAPERS, NUMBER ONE.

NUMBER TWO, THE ISSUE AT THIS POINT IN TIME IS SIMPLY A DETERMINATION AS TO WHETHER OR NOT THERE WAS A MIRANDA VIOLATION.

CERTAINLY IT WOULD BE ARGUED AT THIS POINT IN TIME, THERE HAS BEEN NOTHING ON THE RECORD TO ESTABLISH [2218] WHETHER OR NOT THERE WAS A MIRANDA VIOLATION.

THIRDLY, WITH REGARD TO THE POSSIBILITIES OF FRUITS AT THAT POINT IN TIME, THAT SHOULD BE AN ISSUE THAT SHOULD BE DISCUSSED ONLY

AFTER THE COURT RULES THERE HAS BEEN A MIRANDA VIOLATION.

THERE COULD THEN BE A MOTION TO SUPPRESS.

HE'S SEEKING TO GO INTO WHAT IS CLEARLY JUST A BLANKET FISHING EXPEDITION AT THIS POINT IN TIME UNDER THE GUISE OF SOMEHOW BEING CONNECTED WITH AN ALLEGED MIRANDA VIOLATION, WHICH HAS NOT BEEN ESTABLISHED. CERTAINLY HAS NOT BEEN RULED ON.

IF THERE SHOULD BE A RULING THAT THERE IS A VIOLATION, THEN SUBSEQUENTLY WE CAN GO INTO THIS AREA.

THE COURT: I'M INCLINED TO AGREE, MR. ROBUSTO.

IF I FIND THAT THERE IS SOME VIOLATION IN REGARDS TO THE MIRANDA ISSUE, THEN WE WOULD EXPLORE WHERE THAT MIGHT LEAD IN TERMS OF TESTIMONY.

IF I FIND THAT THERE IS NOT ANY VIOLATION OF DEFENDANT'S RIGHTS, THEN IT DOESN'T MAKE ANY DIFFERENCE WHAT THEY DID IN RESPONSE TO THAT.

IS THAT CORRECT?

MR. ROBUSTO: NO, YOUR HONOR. IT'S NOT CORRECT.

THE COURT: WELL THAT'S BLUNT.

MR. ROBUSTO: THE REASON IT'S NOT CORRECT IS BECAUSE, NUMBER ONE, - I WOULD LIKE TO RESPOND TO MR. BURNS' COMMENT, NOTHING ABOUT FRUITS OF THE POISONOUS TREE BEFORE THE COURT.

IN THAT PARTICULAR MOTION, A REQUEST THAT [2219] FRUITS OF THE POISONOUS TREE OR FRUITS BE SUPPRESSED AS A RESULT OF THE IMPROPER MIRANDA.

AND WOULD ALSO ARGUE TO THE COURT AND RESPECTFULLY REQUEST THE COURT TO ALLOW ME TO PROCEED AT THIS POINT IN TIME FOR JUST A TIME SAVING FACTOR.

IF THERE IS A MOTION TO STRIKE AT A LATER TIME AND THE COURT RULES THAT'S APPROPRIATE, THEN NO HARM, NO FOUL.

THE COURT: HOW LONG DO YOU THINK IT'S GOING TO TAKE YOU TO PURSUE THIS LINE OF QUESTIONS?

MR. ROBUSTO: NO MORE THAN A FEW SECONDS.

THE COURT: OVERRULED.

YOU MAY PROCEED.

BY MR. ROBUSTO:

Q. DETECTIVE BELL, DID YOU GO TO A PARTICULAR GAS STATION AS A RESULT OF THE INFORMATION YOU ACQUIRED FROM MR. STANSBURY DURING THE INTERVIEW WITH MR. STANSBURY ON SEPTEMBER 29TH, 1982?

A. YES.

Q. AND YOU WENT TO THAT PARTICULAR GAS STATION AS A RESULT OF THE INFORMATION THAT YOU ACQUIRED FROM MR. STANSBURY?

A. YES.

Q. NOW, DID - PRIOR TO THE INTERVIEW WITH MR. STANSBURY, DID YOU HAVE ANY INFORMATION ABOUT MR. STANSBURY'S PRIOR RECORD?

A. NO.

Q. DID YOU RUN A RAP SHEET ON MR. STANSBURY?

[2220] A. NO.

Q. DID ANYBODY FROM BALDWIN PARK POLICE DEPARTMENT RUN A RAP SHEET ON MR. STANSBURY?

A. NOT THAT I KNOW OF.

Q. DID ANY OTHER OFFICER COMMUNICATE TO YOU HIS PRIOR RECORD?

A. NO.

Q. NOW, YOU INDICATED THAT YOU WENT TO A PARTICULAR GAS STATION ON ARROW HIGHWAY.

IS THAT CORRECT?

A. YES.

Q. WHAT GAS STATION DID YOU GO TO?

A. I'M REALLY NOT SURE OF THE NAME, BUT I KNOW IT'S RIGHT BY SEARS.

I BELIEVE IT IS A SAV-MOR.

Q. AND AS A RESULT OF GOING TO THAT GAS STATION, YOU ENDED UP TALKING TO A WITNESS BY THE NAME OF BEVERLY ALLEN.

IS THAT CORRECT?

A. YES.

MR. ROBUSTO: I HAVE NOTHING FURTHER, YOUR HONOR.

MR. BURNS: NO QUESTIONS.

THE COURT: YOU MAY STEP DOWN.

YOU ARE FREE TO GO, OFFICER. THANK YOU.

THE COURT: MR. DAUGHERTY, YOU'RE NEXT.

MR. DAUGHERTY: YOUR HONOR, AS FAR AS I'M CONCERNED, I HAVE SUBMITTED ALL THE EVIDENCE THAT I FELT WAS APPROPRIATE ON THIS MOTION.

[2221] THE COURT: OKAY, SO YOU'RE RESTING THEN AT THIS POINT ON THE MOTION?

MR. DAUGHERTY: MR. STANSBURY HAS SOME ADDITIONAL EVIDENCE TO PRESENT ON THE MOTION.

THE COURT: ALL RIGHT. FINE.

MR. STANSBURY?

DEFENDANT STANSBURY: YOUR HONOR, AT THIS TIME I WOULD LIKE TO CALL DETECTIVE JOHNSTON TO THE STAND.

THE COURT: RECALL DETECTIVE JOHNSTON?

DEFENDANT STANSBURY: YES.

THOMAS JOHNSTON, +
DEFENSE WITNESS, HAVING BEEN PREVIOUSLY SWORN, TESTIFIES FURTHER AS FOLLOWS:

THE CLERK: YOU'RE STILL UNDER OATH.

JUST TAKE THE STAND. STATE YOUR NAME FOR THE RECORD.

THE WITNESS: THOMAS JOHNSTON. J-O-H-N-S-T-O-N.

DIRECT EXAMINATION +
BY DEFENDANT STANSBURY:

Q. LIEUTENANT JOHNSTON, I BELIEVE WE ESTABLISHED THAT YOU WERE WORKING FOR THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT ON SEPTEMBER 28TH OF 1982?

A. THAT'S CORRECT.

Q. ON SEPTEMBER THE 29TH, UPON YOUR CONDUCTING THE INTERVIEW WHICH WAS HELD BY YOU IN THE POMONA POLICE [2222] DEPARTMENT, I BELIEVE YOU CLARIFIED THAT IT WAS MORE THAN ANYTHING ELSE A NARRATIVE.

IS THAT CORRECT?

A. THERE WERE PORTIONS THAT WERE NARRATIVE.

I DON'T KNOW IF I MADE A DETERMINATION THAT THE MAJORITY WAS NARRATIVE OR NOT.

Q. AT THAT TIME, DID YOU ADVISE ME OF WHAT THE PARTICULAR POSSIBLE ITEMS I MAY HAVE WITNESSED WAS, OR ANYTHING OF THAT NATURE?

A. AT THE BEGINNING OF THE INTERVIEW, YES.

Q. YOU DID?

A. YES, SIR.

Q. COULD YOU TELL US EXACTLY WHAT YOU SAID AT THAT TIME?

A. TO THE BEST OF MY RECOLLECTION, I ADVISED YOU THAT I WAS INVESTIGATING CIRCUMSTANCES SURROUNDING THE DISAPPEARANCE OF A YOUNG GIRL FROM THE BALDWIN PARK AREA ON THE PREVIOUS AFTERNOON.

Q. WAS THERE ANY ONGOING REQUEST FOR FURTHER INFORMATION MADE BY MYSELF?

A. NOT THAT I RECALL.

Q. DID I AT ANY TIME REQUEST TO LEAVE FOR THE PURPOSE OF OBTAINING SOME CIGARETTES?

A. NO.

Q. COULD YOU DESCRIBE THE LOCATION OF THE INTERROGATION ROOM SLIGHTLY BETTER THAN YOU HAVE ALREADY?

A. NO.

Q. I BELIEVE YOU SPECIFIED THAT IT WAS IN THE [2223] GENERAL AREA OF THE BOOKING AREA?

A. IT WAS IN CLOSE PROXIMITY OF THE BOOKING AREA OF THE POMONA POLICE DEPARTMENT, YES.

Q. WHEN YOU SAY CLOSE PROXIMITY, CAN YOU GIVE US SOME TYPE OF AN ESTIMATION AS TO HOW CLOSE?

A. NOT ACCURATELY, NO.

Q. WELL, COULD YOU GIVE US AN APPROXIMATION?

A. I RECALL THAT IT WAS DOWN THE CORRIDOR FROM THERE.

I RECALL THEIR BOOKING COUNTER WAS ON THE OTHER SIDE OF THE HALLWAY.

HOW FAR DOWN THE HALLWAY, AGAIN, IT WOULD BE MY BEST RECOLLECTION AT THIS TIME, BUT IT SEEMS TO ME PERHAPS EIGHT TO TEN FEET.

Q. EIGHT TO TEN FEET DOWN THE HALLWAY?

A. TO THE BEST OF MY RECOLLECTION, YES.

Q. UPON GOING INTO THAT AREA, I BELIEVE YOU PREVIOUSLY SPECIFIED THAT YOU HAD BEEN UPSTAIRS?

A. I HAD BEEN, YES, SIR.

Q. AND UPON LEAVING UPSTAIRS AND GOING TO THAT AREA, DID YOU HAVE TO GO IN THROUGH ANY LOCKED DOORS?

A. I UNDERSTAND THAT THERE WAS A DOOR THAT WOULD BE LOCKED FOR A PERSON GOING FROM THE JAIL AREA INTO THE POLICE STATION PROPER, BUT I DO NOT RECALL IF IT WAS LOCKED IN THE DIRECTION OF TRAVEL THAT I TOOK.

Q. ARE YOU INSINUATING THAT THAT WOULD BASICALLY BE A DETENTION AREA?

A. WELL, IT WOULD BE WITHIN THE JAIL FACILITY, [2224] YES.

Q. WHICH IS A DETENTION AREA?

A. IT WOULD BE A SECURED FACILITY.

Q. SECURED FACILITY?

A. YES.

Q. MEANING THAT AN INDIVIDUAL COULD NOT JUST GET UP AND WALK OUT FROM HIS OWN FREE WILL UNLESS SOMEONE OPENED THE DOOR FOR HIM?

A. RIGHT. THE DOOR WOULD HAVE TO BE UNLOCKED BY SOMEBODY WHO HAD CONTROL OF THE DOOR.

Q. WHEN I DESCRIBED THE GAS STATION - WELL STRIKE THAT, PLEASE.

UPON YOUR BEGINNING OF THE INTERVIEW, DID YOU, OR COULD YOU TELL US WHAT YOU SAID AT THAT TIME OR WHAT QUESTIONS YOU ASKED AT THAT MOMENT?

A. IT HAD TO BE IN REFERENCE TO YOUR BEING IN THE BALDWIN PARK AREA ON THE PREVIOUS DATE, SOMETHING IN THE WAY OF ADDRESSING THAT AREA AND THAT PARTICULAR DATE.

BUT SPECIFICALLY, I COULDN'T RECALL.

Q. DO YOU RECALL ASKING ME ANYTHING RELATING TO THE ROUTE I MAY HAVE TAKEN TO GET THERE?

A. YES, SIR.

Q. WAS THERE ANY SPECIFIC REASON FOR THAT?

THE COURT: EXCUSE ME, FOR WHAT?

DEFENDANT STANSBURY: FOR HIM ASKING ME THE ROUTE TO GET TO BALDWIN PARK?

THE WITNESS: THE ROUTE TO BALDWIN PARK?

[2225] BY DEFENDANT STANSBURY:

Q. YES.

A. NO, NO SPECIFIC REASON THAT I CAN RECALL.

Q. DID YOU ASK ME SPECIFICALLY WHAT I HAD DONE FROM THE TIME I GOT UP THAT MORNING?

A. NOT SPECIFICALLY, NO.

Q. OR DID YOU ASK ME UNSPECIFICALLY?

A. I DID NOT INQUIRE REGARDING YOUR EVERY ACTION FROM THE TIME YOU GOT UP THAT MORNING.

Q. DID YOU ASK ME WHAT I HAD DONE PRIOR TO GOING TO BALDWIN PARK?

A. NO.

Q. DID YOU ASK ME WHERE I HAD LOADED WITH ICE CREAM THAT MORNING?

A. NO.

Q. DID YOU ASK ME IF I HAD GOTTEN ANY OTHER MERCHANDISE THAT MORNING?

A. NO.

Q. DID YOU ASK ME WHAT TIME I HAD ARRIVED IN BALDWIN PARK?

A. I DON'T KNOW IF I ASKED SPECIFICALLY THAT.

HOWEVER, I KNOW THAT IS INFORMATION THAT I HAVE AS A RESULT OF THE INTERVIEW.

Q. DID YOU ASK ME WHAT TIME I LEFT THE TRAILER THAT MORNING?

A. NO.

Q. DID YOU ASK ABOUT VARIOUS AREAS I HAD DRIVEN EARLY THAT MORNING WITHIN BALDWIN PARK?

[2226] MR. BURNS: YOUR HONOR, I'LL OBJECT AS VAGUE AT THIS POINT IN TIME.

WHEN HE SAID EARLIER THAT MORNING, I'M NOT SURE WHAT HE'S REFERRING TO.

THE COURT: WOULD YOU READ THE QUESTION BACK TO ME.

(THE RECORD WAS READ BY THE REPORTERS)

THE COURT: DO YOU UNDERSTAND THAT QUESTION?

THE WITNESS: YES, SIR.

THE COURT: YOU MAY ANSWER IT.

THE WITNESS: YOUR ROUTE WITHIN BALDWIN PARK BEGINNING AT 10 OR 11, WHICH WAS YOUR ESTIMATED TIME OF ARRIVAL IN BALDWIN PARK WAS DISCUSSED, YES.

BY DEFENDANT STANSBURY:

Q. WAS THE INTERROGATION AT ANY TIME TAPED IN ANY WAY?

A. NO.

Q. IS THAT OF YOUR OWN PERSONAL KNOWLEDGE, OR COULD IT HAVE BEEN TAPED WITHOUT YOUR KNOWLEDGE?

A. IT'S HARDLY LIKELY THAT IT WOULD BE TAPED WITHOUT MY KNOWLEDGE.

Q. IS THERE ANY POLICY REGARDING TAPING OF POSSIBLE WITNESSES, COMMENTS OR ANYTHING IN HOMICIDE CASES?

A. NO.

Q. I BELIEVE YOU TESTIFIED EARLIER THAT THIS INVESTIGATION OR INTERROGATION LASTED IN THE NEIGHBORHOOD OF AN HOUR, HOUR AND A HALF?

A. I NEVER TESTIFIED TO THAT.

[2227] Q. WELL, VERY WELL.

HOW LONG DID IT LAST APPROXIMATELY?

A. TO THE BEST OF MY RECOLLECTION, IT DIDN'T EXCEED ONE-HALF AN HOUR.

Q. IT DID NOT EXCEED ONE-HALF OF AN HOUR?

A. THAT'S MY BEST RECOLLECTION.

Q. DO YOU RECALL WHAT TIME IT BEGAN?

A. JUST APPROXIMATELY.

Q. WHAT WOULD THAT HAVE BEEN?

A. 2300 HOURS, WHICH IS 11 P.M..

Q. DO YOU RECALL WHAT TIME I WAS BOOKED?

A. NO, BUT THAT SHOULD BE ON YOUR BOOKING SLIP.

DEFENDANT STANSBURY: I'M SORRY, YOUR HONOR. MAY I HAVE A MOMENT?

THE COURT: YOU CERTAINLY MAY, MR. STANSBURY.

MR. ROBUSTO: MR. BURNS HAS A COPY OF THE BOOKING SLIP, YOUR HONOR.

DEFENDANT STANSBURY: SO THEREFORE -

THE COURT: EXCUSE ME, DO YOU WANT TO LOOK AT THAT BEFORE YOU ASK THE QUESTION?

DEFENDANT STANSBURY: I BELIEVE I ALREADY KNOW THE ANSWER TO THE QUESTION I WISH TO ASK, YOUR HONOR.

THE COURT: ALL RIGHT, FINE.

DEFENDANT STANSBURY: I WAS ATTEMPTING TO SEE IF WE HAD A COPY IN OUR FILES SO THAT I COULD PERHAPS USE IT AT A LATER TIME.

THE COURT: ALL RIGHT.

[2228] BY DEFENDANT STANSBURY:

Q. SO THEREFORE, IF THE INTERROGATION STARTED AT APPROXIMATELY 11 P.M. AND LASTED FOR APPROXIMATELY 30 MINUTES, ARE YOU SAYING THAT IT WOULD HAVE BEEN FINISHED BY 11:30?

A. I OBJECT TO THE WORD, INTERROGATION, MR. STANSBURY, IT WAS AN INTERVIEW.

AND IF IT STARTED AT 11 P.M., IT CERTAINLY WOULD HAVE BEEN TERMINATED IN THE AREA OF 11:30 P.M., YES.

Q. HOW LONG WOULD IT HAVE BEEN TAKEN OR SHOULD IT HAVE TAKEN TO BOOK ME?

A. THE ACTUAL PHYSICAL ACT OF BOOKING YOU?

Q. YES.

A. THERE'S A NUMBER OF VARIABLES THAT ENTER INTO THAT QUESTION SUCH AS WHO WAS DOING THE BOOKING, THE FAMILIARITY WITH THE LOCATION, THE PROCEDURES AT THAT PARTICULAR LOCATION.

IF YOU WERE TO BE BOOKED INTO A SHERIFF'S FACILITY, ONE THAT I WAS FAMILIAR WITH IT, BOOKING COULD PROBABLY BE ACCOMPLISHED WITHIN 15, 20 MINUTES.

Q. BUT ONE THAT YOU WERE NOT FAMILIAR WITH, WHICH I BELIEVE YOU SPECIFIED YOU WERE NOT ACQUAINTED WITH THE POMONA POLICE DEPARTMENT?

A. THAT IS CORRECT.

Q. HOW LONG COULD THAT HAVE TAKEN?

A. I DON'T RECALL.

Q. COULD IT HAVE TAKEN 20 MINUTES?

A. MINIMALLY, SURE.

[2229] Q. 30?

A. POSSIBLY.

Q. COULD IT HAVE TAKEN AS LONG AS 45 MINUTES?

A. IT'S POSSIBLE, YES.

Q. IT COULD TAKE AS LONG AS 45 MINUTES TO GO EIGHT FEET AND FILL OUT A PERSON'S BOOKING SLIP?

A. TO COMPLETE A BOOKING, IT'S MORE THAN FILLING OUT A BOOKING SLIP, MR. STANSBURY.

Q. IS THE STANDARD POLICY TO WRITE DOWN THE TIME AT THE BEGINNING OF FILLING OUT THE BOOKING SLIP?

A. I BELIEVE THAT'S FILLED OUT AT THAT PARTICULAR POINT WHEN THE BOOKING SLIP IS ARRIVED AT.

I DON'T KNOW WHETHER THERE'S A SET POLICY DESIGNATING EXACTLY WHAT SPECIFIC POINT IN TIME REFERENCE TO THE CUSTODY OF A PERSON THAT HAS TO BE ENTERED IN THE BOOKING SLIP, ITSELF.

Q. BUT IT IS ONE OF THE FIRST QUESTIONS ON THE BOOKING SLIP, ONE OF THE FIRST?

A. WELL, IT'S NEAR THE BEGINNING OF THE BOOKINGSLIP, YES.

[2230] Q. SO JUST TO GET TO THAT POINT, APPROXIMATELY HOW LONG WOULD IT TAKE AS THEY WALKED IN, APPROXIMATELY EIGHT FEET?

A. WITH THE BOOKING SLIP IN HAND, YOU WOULD, WITH THE COOPERATION OF THE SUSPECT, PROBABLY ARRIVE AT THAT POINT IN THE BOOKING SLIP WITHIN FIVE MINUTES.

Q. WAS I UNCOOPERATIVE IN ANY WAY?

A. NO.

Q. SO, THEREFORE, THAT PART AT LEAST SHOULD HAVE BEEN FILLED OUT WITHIN FIVE MINUTES?

A. FROM THE BEGINNING OF THE BOOKING SLIP ITSELF, YES.

DEFENDANT STANSBURY: MR. BURNS, COULD I POSSIBLY BORROW YOUR BOOKING SLIP FOR A FEW MOMENTS?

MR. BURNS: I HAVE A COPY, A PHOTOCOPY OF THE BOOKING SLIP WHICH I'M NOW HANDING TO THE DEFENSE TEAM.

THE COURT: THE RECORD WILL SO REFLECT.

DEFENDANT STANSBURY: MAY I APPROACH?

THE COURT: YOU CAN HAVE MR. SMITH OR IF YOU WISH, MAYBE IT WOULD BE BETTER. JUST HAVE ONE OF THE ATTORNEYS DO THAT.

WOULD YOU MIND DOING THAT, MR. DAUGHERTY OR, MR. ROBUSTO.

I'D RATHER NOT TIE UP MR. SMITH DOING ANY OF THOSE THINGS.

BY DEFENDANT STANSBURY:

Q. WOULD YOU PLEASE REVIEW THE BOOKING SLIP IN QUESTION AT THIS POINT, MR. JOHNSTON?

[2231] A. CERTAINLY.

ALL RIGHT.

Q. WHAT TIME DOES IT STATE ON THERE THAT I WAS BOOKED?

A. 0030 HOURS; THAT WOULD BE 12:30 A.M.

Q. WHICH WOULD HAVE BEEN APPROXIMATELY AN HOUR AND A HALF - I MEAN APPROXIMATELY ONE HOUR AFTER THE INTERVIEW HAD BEEN COMPLETED?

A. IT WOULD BE ONE HOUR APPROXIMATELY TO THE BEST OF MY RECOLLECTION FROM THE TERMINATION OF THE FIRST INTERVIEW.

Q. SO THEREFORE, GOING BY THE BOOKING SLIP, IT TOOK APPROXIMATELY AN HOUR TO GO THAT EIGHT FEET?

MR. BURNS: OBJECTION, YOUR HONOR.

I'LL WITHDRAW THE OBJECTION.

THE COURT: YOU MAY ANSWER.

THE WITNESS: IT DIDN'T TAKE AN HOUR TO GO EIGHT FEET, MR. STANSBURY.

BY DEFENDANT STANSBURY:

Q. WELL, I'M TRYING TO FIND OUT THE REASON FOR THE DISCREPANCY.

THE COURT: WHY DON'T YOU JUST ASK THAT QUESTION, IF THAT'S WHAT YOU WANT.

BY DEFENDANT STANSBURY:

Q. CAN YOU EXPLAIN THE DISCREPANCY, MR. JOHNSTON?

A. CERTAINLY.

UPON THE TERMINATION OF THE FIRST INTERVIEW, [2232] THERE WAS A DISCUSSION BETWEEN THE INVESTIGATORS, A RESUMPTION OF AN INTERVIEW WITH YOU WHICH AT THAT POINT WAS IN THE FORM OF AN INTERROGATION.

THE PERIOD OF TIME THAT PARTICULAR ENCOUNTER REQUIRED FOLLOWED BY FURTHER DISCUSSION BY THE INVESTIGATORS, SPECIFIC AS TO AN ARREST AT THAT PARTICULAR TIME, FURTHER DISCUSSION RELATIVE TO THE ADVANTAGES OR DISADVANTAGES OF BOOKING MR. STANSBURY AT POMONA POLICE DEPARTMENT VERSUS THE SHERIFF'S FACILITY OR VERSUS MAIN CENTRAL JAIL.

THERE WAS A NUMBER OF DISCUSSIONS THAT TOOK PLACE PRIOR TO YOUR BEING TAKEN EIGHT FEET AND THE BOOKING PROCEEDINGS STARTING.

Q. THANK YOU.

DURING THE COURSE OF THE INTERVIEW, MR. JOHNSTON, I BELIEVE THAT YOU SPECIFIED THE ROUTE WHICH I HAD RETURNED ON THAT DATE ON THE 28TH WAS DISCUSSED.

IS THAT CORRECT?

A. YES.

Q. AND DO YOU RECALL WHAT MY COMMENTS WERE RELATING TO THAT QUESTION?

A. YOU INDICATED THAT YOU TOOK ARROW HIGHWAY TO POMONA, WHICH WAS CONTRARY TO

YOUR NORMAL ROUTE OF TRAVEL, WHICH WAS TO USE THE 10 FREEWAY.

BASED ON THE PERFORMANCE OF YOUR VEHICLE, YOU INDICATED THAT YOU DIDN'T FEEL THAT IT WAS PERFORMING SATISFACTORY ENOUGH TO HAVE NEGOTIATED KELLOGG HILL ON THE 10 FREEWAY.

[2233] Q. I DID NOT SAY THAT I DID NOT RECALL THE STREET OR ANY PLACE OF THAT NATURE?

A. THERE WERE SOME STREET NAMES THAT YOU WERE UNAWARE OF.

ARROW HIGHWAY WAS A ROADWAY THAT YOU SPECIFICALLY NAMED, YOUR ROUTE NORTH IN BALDWIN PARK TO ARROW HIGHWAY WAS NOT SPECIFICALLY IDENTIFIED.

ANY PARTICULAR ROADS EAST ON ARROW HIGHWAY INTO POMONA WERE NOT SPECIFICALLY IDENTIFIED.

Q. BUT YOU'RE SAYING THAT I DID SPECIFICALLY IDENTIFY THE FILLING STATION AS HAVING BEEN ON ARROW HIGHWAY?

A. YES, YOU DID.

Q. WAS I VERY SPECIFIC ABOUT THE PARTICULAR STATION AT THAT LOCALITY?

A. IN YOUR DESCRIPTION, IT ELIMINATED THE POSSIBILITY OF THE USUAL STANDARD TYPE STATION AS OPPOSED TO THE SERVICE STATION WHERE

YOU PULLED IN AND THE SERVICE BASE AND THE CASHIER BOOTHS AND EVERYTHING ARE THE NORMAL SERVICE STATION, PREVIOUSLY NORMAL SERVICE STATION.

YES, WE ELIMINATED A SERVICE STATION WITH A SEPARATE BUILDING, YES.

Q. HOW DID YOU ELIMINATE THIS?

A. BY YOUR DESCRIPTION. THE CASHIER'S BOOTH WAS CLOSE JUST OFF THE STREET AND WITHIN THE PUMPS AREAS THEMSELVES.

Q. YOU DID NOT ASK VARIOUS QUESTIONS RELATING TO THAT AREA?

[2234] A. RELATING TO THAT AREA?

Q. THE STATION.

A. WELL, WHEN YOU GAVE THAT DESCRIPTION, I SAID SO, THE - IT ISN'T AN ISLAND WITH THE BUILDING OFFSET FROM THE ISLAND. AND YOU SAID NO.

Q. DID YOU ASK ANY OTHER QUESTIONS RELATING TO THAT FILLING STATION?

A. POSSIBLY IN REFERENCE TO IF YOU RECALL THE NAME, THE NAME OR THE BRAND OF THE STATIONS.

Q. WAS I AT ANYTIME OR DID I AT ANYTIME APPEAR UNCERTAIN AS TO THE AREA OF THE STATION IN ANY WAY?

A. ONLY AS TO ITS LOCATION ON ARROW HIGHWAY.

Q. ONLY AS TO ITS LOCATION ON ARROW HIGHWAY. WELL, WAS I AT ANYTIME UNCERTAIN AS TO THE STREET IT WAS ON?

A. THE STREET IT WAS ON, NO.

Q. I WAS NOT.

DO YOU RECALL TESTIFYING EARLIER THAT I HAD SAID I DID NOT KNOW THE STREET OR THE NEAREST INTERSECTION OR THE ADDRESS OR EVEN THE NAME OF THE SERVICE STATION, EXCEPT THAT IT WAS JUST OR REAL - JUST RIGHT OFF THE STREET AND THE CASHIER'S BOOTH WAS IMMEDIATELY IN THE PUMP AREA.

DO YOU RECALL ANY STATEMENTS TO THAT EFFECT BY YOURSELF?

A. PORTIONS OF THAT QUESTION.

YOU ASKED TOO MANY QUESTIONS IN THAT QUESTION, MR. STANSBURY, FOR A DEFINITE YES OR NO.

[2235] Q. VERY WELL.

SO THAT YOU CAN GIVE A DEFINITE YES OR NO, DO YOU RECALL THAT I STATED I HAD STOPPED FOR GAS?

A. YES.

Q. DO YOU RECALL THAT YOU ASKED ME WHERE THAT SERVICE STATION WAS?

A. YOU VOLUNTEERED. WHEN YOU SAID YOU STOPPED FOR GAS, YOU VOLUNTEERED THAT IT WAS ON ARROW HIGHWAY.

Q. I ASKED YOU DID YOU ASK ME -

A. IF YOU STOPPED -

Q. IF I HAD STOPPED FOR GAS?

A. NO.

Q. DID YOU TESTIFY TO THAT YESTERDAY?

A. I DON'T KNOW IF THAT QUESTION WAS SPECIFICALLY ASKED YESTERDAY.

IF I HAD TESTIFIED TO IT, IT WOULD BE THAT I DID NOT ASK THAT QUESTION.

Q. YOU DID NOT?

DID YOU ASK ME WHERE THE STATION WAS LOCATED?

A. AFTER YOU DESCRIBED A SERVICE STATION ON ARROW HIGHWAY, I MAY HAVE ASKED YOU IF YOU COULD BE MORE SPECIFIC.

Q. DID YOU OR DID I AT THAT TIME TELL YOU THAT I DID NOT KNOW THE NAME OF THE STREET?

A. NO.

Q. DID I TELL YOU I DID NOT KNOW THE NAME OF THE NEAREST INTERSECTION?

MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT.

[2236] IF THERE APPEARS TO BE SOME FORM OF PRIOR INCONSISTENT STATEMENT WHICH COUNSEL IS REFERRING TO, I DON'T BELIEVE IT IS AT THIS POINT IN TIME BECAUSE MR. STANSBURY IS TRYING

TO ASK HIM IF HE KNEW WHICH STREET THE GAS STATION WAS ON, AND THE OFFICER'S INDICATING NO.

AND HIS QUESTION OR THE TRANSCRIPT WHICH HE'S REFERRING TO IS THE PRIOR STATEMENT BY THE OFFICER THAT MR. STANSBURY DID NOT KNOW WHAT THE CROSS STREETS OR THE NEAREST STREET OR NEAREST INTERSECTION ON ARROW HIGHWAY WAS.

THE QUESTION WHICH HE'S ASKING THE OFFICER NOW IS DID I AT THAT TIME TELL YOU I DIDN'T KNOW WHAT THE STREET THE GAS STATION IS ON. HIS ANSWER WAS NO, YOU KNOW, IT WAS ON ARROW HIGHWAY.

HE'S NOW ASKING WHETHER OR NOT HE MADE A PREVIOUS STATEMENT THAT THE GAS STATION WAS ON SOME OTHER STREET OTHER THAN ARROW HIGHWAY.

IF HE'S GOING TO ATTEMPT TO IMPEACH BY SOME PRIOR INCONSISTENT STATEMENT, HE'S GOING TO HAVE TO AT SOME POINT SHOW THE WITNESS THE PRIOR STATEMENT HE'S REFERRING TO.

DEFENDANT STANSBURY: MAY I AT THIS TIME, YOUR HONOR, ASK THE LEGAL BASIS FOR THE OBJECTION?

THE COURT: I BELIEVE - EXCUSE ME. MR. BURNS?

MR. BURNS: YES, YOUR HONOR.

HE'S ATTEMPTING TO ASK THE WITNESS CONCERNING SOME PRIOR TESTIMONY WITHOUT SHOWING THE WITNESS OR GIVING [2237] THE WITNESS AN OPPORTUNITY TO VIEW THAT TESTIMONY.

DEFENDANT STANSBURY: I BELIEVE I AM ENTITLED TO ASK THE QUESTIONS FIRST, YOUR HONOR, AND OBTAIN AN ANSWER AT WHICH TIME I CAN THEN ASK THE WITNESS TO REVIEW THE TESTIMONY GIVEN.

I BELIEVE THAT IS REFERRED TO UNDER THE EVIDENCE CODE.

THE COURT: OVERRULED.

YOU MAY ANSWER, OFFICER.

IS THERE A QUESTION PENDING?

DEFENDANT STANSBURY: YES, I STILL HAVE A COUPLE OF QUESTIONS IN THIS AREA.

I DON'T RECALL THE LAST QUESTION I ASKED.

THE COURT: ASK ANOTHER ONE.

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY THAT I DID NOT KNOW THE STREET OR THE NEAREST INTERSECTION?

MR. BURNS: OBJECTION, YOUR HONOR; VAGUE AND AMBIGUOUS AS TO WHAT, AS TO WHAT POINT IN TIME, WHEN THE TESTIMONY WAS OR IN RELATIONSHIP TO WHAT QUESTION.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: VERY WELL.

BY DEFENDANT STANSBURY:

Q. ON SEPTEMBER THE 29TH OF 1982, SOMETIME BETWEEN THE HOUR OF 11 TO 12:00 P.M., IN THE INTERROGATION ROOM OR THE POMONA POLICE DEPARTMENT, AT WHICH TIME I BELIEVE YOU'VE ALREADY SPECIFIED WE WERE BOTH PRESENT, DID I DURING YOUR QUESTIONING SPECIFY THAT I DID NOT KNOW THE [2238] STREET OR THE NEAREST INTERSECTION OF THAT PARTICULAR GAS STATION?

MR. BURNS: OBJECTION, YOUR HONOR; AGAIN, VAGUE.

STREET OR INTERSECTION OF THAT GAS STATION MEANING WHAT? STREET OR INTERSECTION NEAR OR WHERE THAT GAS STATION WAS NEAR OR THAT GAS STATION FACED, WHERE THAT GAS STATION WAS NORTH OR SOUTH OF, I DON'T KNOW WHAT HE MEANS WHEN HE'S IDENTIFYING STREET OR INTERSECTION WITH RESPECT TO THE GAS STATION.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU ASK IF I KNEW THE NAME OF THE STREET THAT THE GAS STATION WAS ON?

A. NO.

Q. DID I SAY I DID NOT KNOW THE NAME OF THE STREET THAT THE GAS STATION WAS ON?

A. NO.

Q. DID YOU TESTIFY THAT I SAID I DID NOT KNOW THE NEAREST INTERSECTION LOCATED CLOSEST TO THE FILLING STATION?

MR. BURNS: OBJECTION, YOUR HONOR, VAGUE AND AMBIGUOUS, TESTIFIED AT WHAT POINT IN TIME IN RESPONSE TO WHAT QUESTION.

MR. DAUGHERTY: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES.

I WANT YOU TO READ THAT QUESTION BACK TO ME, PLEASE. FIND IT.

[2239] WHEN THEY FINISH THE CONFERENCE, I WANT YOU TO READ IT BACK.

(PAUSE IN PROCEEDINGS.)

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY YESTERDAY, OFFICER -

THE COURT: YOU'RE ASKING ANOTHER QUESTION NOW?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: ALL RIGHT, FINE.

YOU MAY PROCEED.

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY YESTERDAY, OFFICER JOHNSTON, THAT - AND I WILL QUOTE DIRECTLY FROM THE TRANSCRIPT.

MR. BURNS: IN THAT CASE, YOUR HONOR, REQUEST A PAGE NUMBER.

DEFENDANT STANSBURY: ON PAGE 2107.

MR. BURNS: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES, YOU MAY.

MR. BURNS: WHAT VOLUME NUMBER ARE WE DEALING WITH?

MR. DAUGHERTY: 32?

DEFENDANT STANSBURY: 31.

MR. BURNS: VOLUME 31, PAGE?

DEFENDANT STANSBURY: LINE 8.

THE COURT: HE'S TALKING ABOUT PAGE 2107.

MR. BURNS: THANK YOU.

DEFENDANT STANSBURY: LINE 8 THROUGH 15.

THE COURT: YOU MAY PROCEED, MR. STANSBURY.

[2240] DEFENDANT STANSBURY: WELL, HE SAID HE STOPPED FOR GAS. AND I ASKED HIM IF HE RECALLED WHERE OR WHAT SERVICE STATION IT WAS, WHERE IT WAS LOCATED.

AND HE SAYS NO, HE DOESN'T KNOW THE STREET OR THE NEAREST INTERSECTION OR THE ADDRESS OR EVEN THE NAME OF THE SERVICE STATION, EXCEPT THAT IT WAS REAL - JUST RIGHT OFF

THE STREET AND THAT THE CASHIER'S BOOTH WAS IMMEDIATELY IN THE PUMP AREA.

DO YOU RECALL MAKING THAT STATEMENT, MR. JOHNSTON?

A. YES.

Q. IS THAT A TRUE STATEMENT?

A. IT'S NOT A COMPLETE STATEMENT.

Q. IT'S NOT A COMPLETE STATEMENT?

A. NO.

Q. YOU SAID SOMETHING FOLLOWING THAT?

A. THAT RESPONSE WAS GIVEN AS ADDITIONAL INFORMATION EXCEEDING MY KNOWLEDGE OF ARROW HIGHWAY.

Q. EXCEEDING YOUR KNOWLEDGE?

A. THE INFORMATION I HAD RECEIVED FROM YOU THAT IT WAS ON ARROW HIGHWAY, IT WAS IN RESPONSE TO A QUESTION CONCERNING ANY FURTHER INFORMATION ON THAT SERVICE STATION.

Q. DID YOU MAKE ANY FURTHER COMMENTS RELATING TO MY NOT KNOWING THE VICINITY OR ANYTHING, MR. JOHNSTON?

MR. BURNS: OBJECTION, VAGUE AS TO POINT IN TIME, COMMENTS IN TESTIMONY, COMMENTS AT THE TIME OF THE INTERVIEW?

[2241] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU MAKE ANY FURTHER STATEMENTS ON YESTERDAY'S DATE RELATING TO SEPTEMBER THE 29TH OF 1982 CONCERNING MY KNOWLEDGE OF THE LOCALITY OF THE FILLING STATION?

MR. BURNS: I'LL OBJECT. I DON'T EVEN UNDERSTAND THE QUESTION.

ARE WE ASKING HIM DID HE MAKE ANY STATEMENTS YESTERDAY CONCERNING WHAT HE SAID THAT DAY OR - I'LL OBJECT TO IT AS VAGUE.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU TESTIFY ON YESTERDAY'S DATE -

A. YES.

Q. - THAT I HAD MADE ANY FURTHER STATEMENTS ON SEPTEMBER THE 29TH OF 1982 RELATING TO MY LACK OF KNOWLEDGE OF THE LOCALITY OF THE FILLING STATION?

THE COURT: ARE YOU ASKING, MR. STANSBURY, IF HE REMEMBERS OR DO YOU WANT HIM TO LOOK AT THE TRANSCRIPT TO SEE?

DEFENDANT STANSBURY: I'M ASKING IF HE RECALLS HAVING TESTIFIED, YOUR HONOR.

THE COURT: ALL RIGHT. DO YOU UNDERSTAND THE QUESTION, SIR?

THE WITNESS: NO, SIR.

BY DEFENDANT STANSBURY:

Q. DO YOU RECALL HAVING TESTIFIED YESTERDAY ON A [2242] COUPLE OF DIFFERENT OCCASIONS CONCERNING THE LACK OF MY PERSONAL KNOWLEDGE OF THE LOCALITY OR AREA OF THE STATION, THE FILLING STATION ON SEPTEMBER THE 28TH OF 1982 OR SEPTEMBER 29TH OF 1982?

A. I MAY HAVE.

Q. DO YOU RECALL STATING THAT I HAD SPECIFIED THAT I HAD TO GO ON AN UNUSUAL ROUTE FROM MY REGULAR ROUTE OF TRAVEL -

MR. BURNS: YOUR HONOR, AT THIS POINT, I'LL OBJECT AS BEYOND - NOT DIRECTED TO ANY ISSUES OF MIRANDA, UNLESS HE'S TRYING TO GO OVER THE WITNESS' PRIOR STATEMENT.

THE WITNESS ALREADY TESTIFIED TODAY, JUST A FEW MOMENTS AGO, THAT HIS RECOLLECTION WAS THAT MR. STANSBURY HAD TOLD HIM THAT HE HAD TAKEN A DIFFERENT ROUTE BECAUSE OF CAR PROBLEMS.

I DON'T KNOW THAT WE'RE GOING TO ANY ISSUE DEALING WITH MIRANDA, EXCEPT TO REHASH QUESTIONS THAT WERE ALREADY ASKED, IN WHICH CASE I'LL OBJECT AS ASKED AND ANSWERED.

THE COURT: YOUR RESPONSE, SIR?

DEFENDANT STANSBURY: AS FAR AS IT GOING TO MIRANDA, I BELIEVE IT WOULD GO DIRECTLY TO MIRANDA, SINCE IT WAS ALLEGEDLY,

PORTIONS OF THE STATEMENT, WHICH WERE OBTAINED PRIOR TO BEING MIRANDIZED.

AND IN ADDITION TO THAT, IT WOULD GO TOWARDS THE RECOLLECTION OF THE WITNESS' MEMORY AT THAT TIME.

MR. BURNS: YOUR HONOR, THE QUESTION AT THIS TIME IS DOES HE REMEMBER WHAT HE TESTIFIED TO YESTERDAY, NOT [2243] WHAT TOOK PLACE IN SEPTEMBER OF 1982 AND HE'S ASKING HIM DOES HE REMEMBER TESTIMONY YESTERDAY.

IF THE TESTIMONY OCCURRED YESTERDAY IT'S ASKED AND ANSWERED. IF IT DIDN'T, ASK HIM A NEW QUESTION. IN EITHER EVENT, IT'S IRRELEVANT TO THE PROCEEDINGS.

DEFENDANT STANSBURY: I BELIEVE THAT I AM IN REALITY USING THE SAME ARGUMENT CONCERNING THE WITNESS - THE MEMORY OF THE WITNESS THAT MR. BURNS USED FOR PRACTICALLY AN ENTIRE WEEK IN ORDER TO KEEP ME ON THE WITNESS STAND.

AND I BELIEVE HIS PARTICULAR OBJECTION WAS UPHeld AT ALL TIMES IN THAT AREA RELATING TO THE MEMORY OF THE INDIVIDUAL WHO WAS ON THE WITNESS STAND AT THAT TIME.

I'M SIMPLY USING MR. BURNS' OWN ARGUMENT RELATING TO THE WITNESSES WHO IS ON THE WITNESS STAND AT THIS TIME.

MR. BURNS: YOUR HONOR, THAT'S NOT CORRECT.

I ASKED MR. STANSBURY QUESTIONS CONCERNING HIS RECOLLECTION OF INCIDENTS CONCERNING THE DATE IN QUESTION. THE QUESTION AT THIS TIME IS NOT WHAT DID THIS OFFICER REMEMBER FROM WHAT TOOK PLACE AT THE TIME OF THE INTERVIEW.

THE QUESTION WHICH IS PENDING IS DO YOU REMEMBER WHAT YOU SAID YESTERDAY ABOUT THAT INTERVIEW, WHICH IS NOT AT ISSUE. AND THAT'S WHAT I'M OBJECTING TO.

IF HE'S ALREADY TESTIFIED TO IT, IT'S ASKED AND ANSWERED.

DEFENDANT STANSBURY: TO WHICH I WOULD REPLY -

[2244] THE COURT: EXCUSE ME. I DON'T REMEMBER THE QUESTION NOW, GENTLEMEN, I'M SORRY.

DO YOU REMEMBER THE QUESTION, MR. STANSBURY?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: ALL RIGHT.

ASK IT AGAIN.

DEFENDANT STANSBURY: I ASKED MR. JOHNSTON REMEMBERED HIS TESTIFYING YESTERDAY CONCERNING HIS MEMORY OF 1982 IN SEPTEMBER AS TO WHAT HAD BEEN SAID.

THEREFORE, I AM RE-ASKING THE QUESTION OF WHAT HIS MEMORY WAS YESTERDAY RELATING TO HIS MEMORY OF 1982.

THE COURT: ALL RIGHT.

ANTICIPATING ALL THE ARGUMENTS YOU'VE JUST STATED I'M GOING TO OVERRULE THE OBJECTION.

DO YOU UNDERSTAND THE QUESTION, SIR?

THE WITNESS: NO.

BY DEFENDANT STANSBURY:

Q. DID I AT THAT TIME OR DID YOU, YESTERDAY, TESTIFY THAT ON SEPTEMBER THE 29TH OF 1982 I HAD MADE A STATEMENT THAT I HAD TO FOLLOW AN UNUSUAL ROUTE FROM MY NORMAL ROUTE OF TRAVEL SO THAT IT TOOK SOMETIME FOR ME TO GET HOME?

A. YES.

Q. DID YOU LATER ASK ME IF I HAD STOPPED FOR GAS?

A. NO.

Q. DO YOU RECALL HAVING TESTIFIED YESTERDAY [2245] RELATING TO YOUR MEMORY OF THE INTERVIEW IN QUESTION IN SEPTEMBER THE 29TH OF 1982 THAT YOU DID ASK ME WHERE I HAD STOPPED FOR GAS?

A. I ASKED YOU WHERE, NOT IF.

Q. DO YOU RECALL HAVING ASKED WHAT KIND OF A SERVICE STATION IT WAS?

A. YES.

Q. DID I AT THAT TIME STATE THAT IT WAS PROBABLY DOWN THE ROAD FROM BALDWIN PARK ON ARROW?

A. YOU INDICATED THAT WHEN YOU ADVISED VOLUNTARILY THAT YOU HAD STOPPED FOR GAS ON ARROW HIGHWAY AFTER LEAVING BALDWIN PARK.

Q. I SAID THAT IT WAS PROBABLY DOWN IN THE ROAD ON ARROW?

A. OR -

MR. BURNS: OBJECTION, YOUR HONOR.

THE WITNESS IS NOW - I GUESS, THE ATTORNEY IS NOW TESTIFYING AS TO WHAT HE SAID. IF HE WANTS TO PUT IT IN THE PHRASE OF A QUESTION, THAT'S FINE.

MR. DAUGHERTY: MR. BURNS IS MAKING THAT OBJECTION?

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID I SAY IT WAS PROBABLY DOWN THE ROAD ON ARROW?

A. DOWN - SPECIFICALLY, I CANNOT RECALL THE EXACT WORDS.

Q. DO YOU RECALL HAVING TESTIFIED YESTERDAY THAT I HAD IN SEPTEMBER OF 1982 ON THE 29TH DAY SPECIFIED THAT [2246] IT WAS PROBABLY

DOWN THE ROAD FROM BALDWIN PARK ON ARROW HIGHWAY?

A. THAT WAS THE DEFINITELY THE INFORMATION THAT I UNDERSTOOD YOU TO SAY. WHETHER OR NOT YOU SAID SPECIFICALLY DOWN THE ROAD, AGAIN, THE INFORMATION IS ACCURATE. THE PHRASEOLOGY MAY NOT BE.

Q. GOING OVER YOUR TESTIMONY, MR. JOHNSTON, IT WOULD APPEAR TO ME AND I DON'T KNOW, THAT I MAY HAVE BEEN SOMEWHAT CONFUSED AS TO THE AREA I DID TAKE ON THAT DATE.

SO THEREFORE, I WOULD ASK YOU THE QUESTION AT THIS TIME -

MR. BURNS: OBJECTION, MOTION TO STRIKE, ARGUMENTATIVE, NOT A QUESTION.

THE COURT: GRANTED.

BY DEFENDANT STANSBURY:

Q. DID I APPEAR CONFUSED DURING THE COURSE OF THAT INTERVIEW, DETECTIVE JOHNSTON?

A. NO.

Q. DID, I GIVE IMMEDIATE ANSWERS AT ALL TIMES?

A. YES.

Q. THERE WAS NO HESITATION ON MY PART?

A. ONLY WHERE YOU WERE UNABLE TO NAME A STREET.

Q. DID THAT OCCUR VERY OFTEN?

A. NO.

Q. I BELIEVE YOU SPECIFIED THAT YOU WERE PRESENT WHEN A - I WON'T ATTEMPT TO PRO-
NOUNCE HIS LAST NAME EITHER, THE FIRST NAME
BEING YUSUF, NYANGANIRA, I BELIEVE, CO-COUN-
SEL HAS SPECIFIED, THAT YOU WERE PRESENT
WHEN HIS [2247] LOCATION WAS ENTERED?

A. WHEN HIS RESIDENCE WAS ENTERED, YES.
YES, I WAS.

[2248] Q. DO YOU RECALL SPECIFICALLY WHO
IT WAS THAT HAD KNOCKED ON THE DOOR?

A. TO THE BEST OF MY RECOLLECTION IT WAS
MYSELF.

Q. DO YOU RECALL WHO WAS THERE WITH
YOU WHEN YOU KNOCKED ON THE DOOR?

A. WELL, SERGEANT PATTERSON AND DEPUTY
RIORDAN.

AND FROM MY DEPARTMENT, OFFICER BELL,
LEE - I DON'T KNOW WHETHER LEE'S PARTNER WAS
THERE.

THEY WERE PROBABLY IN REASONABLE PROX-
IMITY TO ME AT THE TIME I KNOCKED ON THE
DOOR.

Q. WAS SERGEANT HIGGENBOTHAM IN THE
AREA?

A. I DON'T KNOW IF HE ENTERED THE APART-
MENT COMPLEX OR IF HE DID -

Q. MY QUESTION WAS WAS SERGEANT HIG-
GENBOTHAM IN THE AREA?

A. I DON'T RECALL.

Q. WHAT CONSTITUTES THE AREA?

A. WITHIN 100, 150, 200 FEET.

Q. THE GENERAL AREA I WOULD CERTAINLY
CONSIDER WITHIN A HALF A BLOCK?

A. THEN HE CERTAINLY WAS THERE.

Q. DO YOU RECALL APPROXIMATELY WHERE
HE MAY HAVE BEEN?

A. NO.

Q. AT THIS TIME, COULD I PLEASE ASK YOU TO
PERHAPS TURN THE PAGE OF THE SHEETS UP
THERE AND DRAW SOME TYPE OF A BASIC DIA-
GRAM TO THE BEST OF YOUR ABILITY FROM YOUR
MEMORY OF THE LOCALITY THAT MR. YUSUF WAS
LOCATED.

[2249] MR. BURNS: OBJECT AT THIS TIME ON
THE GROUNDS OF RELEVANCY.

THE COURT: DO YOU WISH TO RESPOND?
HOW IS THAT RELEVANT TO YOUR MOTION?

DEFENDANT STANSBURY: I'M ATTEMPTING
TO SHOW PRIOR ACTIONS OF OFFICERS BEFORE
INTERVIEWING ME WITH AN ALLEGED WITNESS
WHO WAS PRESUMABLY CATEGORIZED IN THE
SAME CATEGORY THAT THE OFFICER CLAIMS I WAS
CATEGORIZED TO SHOW THEIR PARTICULAR
ACTIONS DURING THAT COURSE OF TIME.

AND THIS WAS IMMEDIATELY PRIOR TO THEIR CONTACT WITH ME.

THE COURT: MAY I SUGGEST THAT AT THIS POINT IF THERE IS TESTIMONY AS TO HOW MR. YUSUF, WHAT HIS CATEGORY WAS AS COMPARED TO YOUR CATEGORY AS OPPOSED TO WHETHER HE WAS A SUSPECT AS OPPOSED TO A WITNESS. IT MAY BE RELEVANT TO THAT QUESTION.

WHY DON'T YOU INQUIRE INTO THAT.

MAY I SUGGEST YOU INQUIRE INTO THAT FIRST. DO YOU UNDERSTAND MY QUESTION?

DEFENDANT STANSBURY: NO, SIR, I DIDN'T.

THE COURT: DO YOU UNDERSTAND MY QUESTION, MR. DAUGHERTY?

MR. DAUGHERTY: YES, I BELIEVE SO.

THE COURT: WOULD YOU MIND - I'M GOING TO SUSTAIN THE OBJECTION.

BY DEFENDANT STANSBURY:

Q. AT THAT TIME, DETECTIVE JOHNSTON, WAS YUSUF A PROSPECTIVE WITNESS OR A SUSPECT OR WHAT?

[2250] A. BOTH.

Q. HE WAS BOTH.

UPON YOUR ARRIVAL YOU SPECIFIED -

THE COURT: MAY I ASK A QUESTION, MR. STANSBURY?

DEFENDANT STANSBURY: CERTAINLY.

THE COURT: WHEN YOU PICKED UP MR. STANSBURY, WAS HE A PROSPECTIVE WITNESS OR A SUSPECT?

THE WITNESS: WITNESS.

THE COURT: HE WAS IN A DIFFERENT CATEGORY THAN YOU CATEGORIZED YUSUF IN THAT RESPECT?

THE WITNESS: YES.

BY DEFENDANT STANSBURY:

Q. DETECTIVE JOHNSTON, COULD YOU PLEASE EXPLAIN WHY I WAS IN A SEPARATE CATEGORY FROM MR. YUSUF?

A. THE INFORMATION THAT I HAD OBTAINED THROUGHOUT THE DAY LED MORE SPECIFICALLY TO A MALE BLACK HAVING BEEN LAST SEEN IN CONTACT WITH ROBYN JACKSON FOLLOWING HER LEAVING HER RESIDENCE AFTER EATING DINNER.

Q. AND YOU HAD NO KNOWLEDGE IN ANYWAY WHATSOEVER CONCERNING MISS ROBYN JACKSON HAVING SPOKEN TO AN ICE CREAM MAN HAVING RED HAIR AND A RED BEARD?

A. OH, I DID HAVE KNOWLEDGE OF THAT.

Q. WHAT WAS THAT PARTICULAR KNOWLEDGE AT THAT TIME, MR. JOHNSTON?

MR. BURNS: OBJECTION. I'LL OBJECT AT THIS POINT. ASKED AND ANSWERED.

THE COURT: OVERRULED.
YOU MAY ANSWER.

[2251] THE WITNESS: THAT KNOWLEDGE CONCERNED CONVERSATION WITH A MAN WITH RED HAIR AND A RED BEARD INVOLVING ROBYN JACKSON AND JEREMY RAMOS PRIOR TO ROBYN JACKSON GOING TO DINNER.

BY DEFENDANT STANSBURY:

Q. DID YOU RECEIVE ANY INFORMATION CONCERNING JEREMY RAMOS, WORDS OR THOUGHTS IN THAT PARTICULAR AREA RELATING TO A RED-HEADED MAN WITH A BEARD?

A. INFORMATION THAT I HAD RECEIVED FROM MRS. SANCHEZ AND THE OTHER WOMAN WAS THAT JEREMY RAMOS HAD INDICATED TO THEM - IT WAS THEIR UNDERSTANDING FROM INFORMATION FROM JERRY RAMOS THAT HE HAD SEEN ROBYN JACKSON WITH THE MAN WITH THE RED HAIR AND THE BEARD AFTER THE DINNER HOUR.

Q. AFTER DINNER HOUR?

A. THAT WAS THE INFORMATION THOSE TWO PEOPLE GAVE US BASED ON THEIR CONVERSATION WITH JEREMY RAMOS.

Q. WHEN WAS THAT INFORMATION IMPARTED TO YOU, IF YOU RECALL?

A. PRIOR TO MY INTERVIEW WITH JEREMY RAMOS.

Q. WAS THIS PRIOR TO YOUR FIRST INTERVIEW OR YOUR SECOND INTERVIEW, OR DO YOU RECALL?

A. TO MY RECOLLECTION, IT WOULD BE MY FIRST INTERVIEW.

Q. SO, THEREFORE, YOU DID HAVE SOME TYPE OF KNOWLEDGE REGARDING JEREMY RAMOS HAVING PERHAPS SEEN AN INDIVIDUAL WITH RED HAIR AND A RED BEARD PRIOR TO INTERVIEWING ME?

[2252] A. YES.

Q. DO YOU RECALL -

THE COURT: MAY I ASK ANOTHER QUESTION, MR. STANSBURY; MAY I ASK ANOTHER QUESTION?

DEFENDANT STANSBURY: YES.

THE COURT: AFTER YOU TALKED TO MISS SANCHEZ AT THAT POINT, THEN DID YOU HAVE A CONVERSATION WITH HIM, THE RAMOS BOY?

THE WITNESS: YES.

THE COURT: YOU'VE TESTIFIED TO THAT BEFORE, AS I RECALL.

THE WITNESS: YES, SIR.

THE COURT: AND WHAT WAS THE INFORMATION THAT THE RAMOS BOY GAVE YOU AGAIN?

THE WITNESS: HE TOLD US THAT HE HAD BEEN PRESENT WHEN THERE WAS A CONVERSATION WITH ROBYN JACKSON AND THE ICE CREAM

MAN WITH THE RED BEARD PRIOR TO THEM GOING TO DINNER TO ROBYN JACKSON'S HOUSE.

AND FOLLOWING THE DINNER, HE SAW ROBYN JACKSON APPROACH AND SPEAK TO A BLACK MAN IN A BLUE ICE CREAM TRUCK UP THE STREET FROM THE VICTIM'S RESIDENCE.

THE COURT: AT THIS POINT WE'LL BE IN RECESS UNTIL 1:30.

THANK YOU, OFFICER.

YOU MAY STEP DOWN.

(AT 12:00 NOON, A RECESS WAS TAKEN UNTIL 1:30 P.M. OF THE SAME DAY.)

[2253] POMONA, CALIFORNIA; THURSDAY, 11-01-84;

* 1:40 P.M. DEPT. EAST H

HON. JAMES H. PIATT, JUDGE

(APPEARANCES AS HERETOFORE NOTED.)

THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, MR. STANSBURY ARE PRESENT.

I BELIEVE, MR. STANSBURY, THAT YOU WERE EXAMINING OFFICER JOHNSTON.

YOU MAY PROCEED, SIR. YOU MAY CONTINUE.

THOMAS JOHNSTON, +
WITNESS, RESUMES STAND AND TESTIFIES FURTHER AS FOLLOWS:

DIRECT EXAMINATION + (CONT'D)

BY DEFENDANT STANSBURY:

Q. YOU STATED EARLIER TODAY, LIEUTENANT JOHNSTON, THAT YUSUF WAS CONSIDERED AS A WITNESS AND AS A SUSPECT.

IS THAT CORRECT?

MR. BURNS: AT THIS POINT, I'M GOING TO OBJECT, YOUR HONOR.

I'M GOING TO OBJECT ON A NUMBER OF GROUNDS. WE HAD ESTABLISHED PRIOR, I THOUGHT, AT LEAST PRIOR TO YESTERDAY SOME FORMAT OR UNDERSTANDING AS TO HOW WE WERE GOING TO BE CONDUCTING THESE MOTIONS.

THAT FORMAT, I UNDERSTOOD THOUGH, DESPITE THE [2254] FACT THAT MR. STANSBURY HAS THE BENEFIT OF MULTIPLE COUNSEL IN THIS CASE INCLUDING HIS OWN SERVICES, THAT THERE WAS GOING TO BE ONE ATTORNEY WHO WAS GOING TO HANDLE ONE ASPECT OF THE PROCEEDINGS, WHICHEVER ASPECT THAT WAS IN.

MY FURTHER UNDERSTANDING THAT THE TWO ATTORNEYS WHO WERE GOING TO BE RESPONSIBLE FOR COURTROOM PRESENTATION, MR. STANSBURY

OR MR. DAUGHERTY, THEIR CHOICE, MR. STANSBURY BEING THE PERSON WHO COULD THEN DECIDE IT.

AT THIS POINT IN TIME, WHAT WE ARE SEEING IS A WITNESS WHO WAS CALLED TO THE STAND WHO TESTIFIED ON THE ISSUE OF MIRANDA ON AT LEAST TWO DAYS, TUESDAY AND WEDNESDAY.

HE WAS SUBJECTED TO CROSS-EXAMINATION ON BEHALF OF MR. STANSBURY BY THE THEN ELECTED COUNSEL OR NOMINATED COUNSEL, IF YOU WILL, MR. DAUGHERTY.

MR. DAUGHERTY WAS SELECTED BY THE DEFENSE TEAM TO CONDUCT THE QUESTIONING AND ASK ALL RELEVANT QUESTIONS WHICH HE FELT WAS IMPORTANT OF THIS WITNESS.

IF MR. STANSBURY HAD ANY QUESTIONS HE WISHED TO ASKED, HE COULD HAVE HAD THAT ACCOMPLISHED BY AND THROUGH MR. DAUGHERTY AS ANY DEFENDANT CAN BY AND THROUGH THEIR ATTORNEY.

BY THE SIMPLE DEVICE OR TRICK OR MEANS OF MR. STANSBURY LATER CLAIMING ON A DIFFERENT DATE AND TIME THAT HE NOW WISHES TO RECALL THE SAME WITNESS, WHAT HE'S ESSENTIALLY ATTEMPTING TO DO IS HAVE MR. DAUGHERTY [2255] CROSS-EXAMINE OR ASK QUESTIONS OF A WITNESS.

THEN LATER AT SOME POINT IN TIME, ALLOWING HIMSELF TO ASK QUESTIONS AGAIN, WHICH IS EXACTLY WHY THE COURT HAS DEVELOPED A RULE OR PROCEDURE TO LIMITED EXAMINATION

OR PRESENTATION ON ANY ONE ISSUE IN THIS CASE; WE'RE DEALING WITH QUESTIONING ONE WITNESS TO ONE ATTORNEY PER ONE SIDE.

THE ANALOGOUS SITUATION IS SHOULD THE DISTRICT ATTORNEY'S OFFICE THEN BRING IN A SECOND DISTRICT ATTORNEY IF I WAS DONE QUESTIONING THE WITNESS. AND NOW THE ATTORNEY TO RECALL THE WITNESS TO THE STAND FOR FURTHER EXAMINATION.

THE DEFENSE HAS HAD MORE THAN AN AMPLE OPPORTUNITY OVER TWO DAYS TO CROSS EXAMINE THIS WITNESS. THEY INDICATED THEY HAD NO FURTHER QUESTIONS OF THIS WITNESS.

NOW HE'S BEEN RECALLED BY A DIFFERENT MEMBER OF THAT DEFENSE TEAM. IT SEEMS TO ME THAT BOTH SIDES - THE FACT THAT WE ARE GETTING INTO - AND AGAIN, MR. STANSBURY'S QUESTION IS GOING OVER AREAS THAT WERE ASKED BY MR. DAUGHERTY. SO THAT THE SUBJECT ITSELF IS ASKED AND ANSWERED.

BUT IN ADDITION TO THAT, WE'RE NOW VIOLATING THE PROCEDURE THAT I THOUGHT WE HAD ESTABLISHED.

I WOULD OBJECT TO IT FURTHER CONTINUING.

THE COURT: MR. STANSBURY, DO YOU WISH TO RESPOND?

DEFENDANT STANSBURY: TO SUM IT UP, I WOULD [2256] BASICALLY AGREE WITH MR. BURNS WITH TWO EXCEPTIONS.

NUMBER ONE, AT NO TIME DID I EVER SPECIFY THAT THERE WERE NO OTHER QUESTIONS.

AS A MATTER OF FACT, I HAD A COUPLE OF QUESTIONS THAT I SPECIFICALLY REQUESTED THAT COUNSEL WAS TO ASK WHICH WERE NOT ASKED.

NUMBER TWO, I HAVE BEEN LABORING UNDER THE IMPRESSION THAT I DID NOT RECALL MR. JOHNSTON TO THE STAND; THAT I HAD CALLED MR. JOHNSTON TO THE STAND AS MY WITNESS AT THIS TIME.

THEREFORE, THAT WOULD NOT BE REEXAMINING OR RECALLING THE WITNESS.

THAT WOULD BE CALLING THE WITNESS FOR THE FIRST TIME ON DIRECT EXAMINATION BY THE DEFENSE.

SECONDLY, OR THIRDLY, I GUESS I SHOULD SAY. THAT WOULD IN REALITY MEAN THAT WHILE MR. DAUGHERTY HAD CROSS-EXAMINED UPON MR. BURNS' TERMINATION OF DIRECT EXAMINATION, THAT I'M NOT ON CROSS-EXAMINATION.

I'M ON DIRECT EXAMINATION BECAUSE OF THE FACT THAT I HAVE NOT SUMMONED THIS PARTICULAR WITNESS AS A WITNESS FOR THE DEFENSE RATHER THAN THE PEOPLE.

THE COURT: I'M GOING TO ALLOW THE EXAMINATION OF LIEUTENANT JOHNSTON TO CONTINUE.

HOWEVER, I AGREE WITH MR. BURNS IN THIS RESPECT. I HAVE DEVIATED IN THE FRAMEWORK OF THIS MOTION.

LIEUTENANT JOHNSTON WAS ON THE STAND, WAS EXAMINED EXTENSIVELY BY MR. DAUGHERTY. AND I HAVE ALLOWED THIS TO START.

[2257] THERE WAS NO OBJECTION ORIGINALLY. I SUPPOSE I SHOULD HAVE INTERPOSED MY OWN.

I WOULD INDICATE THIS EXCEPTION TO THAT RULE THAT I HAVE INDICATED IS NOT GOING TO CARRY INTO THE TRIAL.

IT WON'T CONTINUE BEYOND THIS POINT.

I'LL ALLOW YOU TO FINISH WITH MR. JOHNSTON. BUT ONE OF THE MEMBERS OF THE DEFENSE TEAM MAY CONDUCT AN EXAMINATION OF THE WITNESS. AND THEN WE'RE NOT GOING TO ALLOW YOU OR ANYBODY ELSE TO RECALL THAT WITNESS.

YOU'LL HAVE TO POOL YOUR COLLECTIVE THOUGHTS AND RESOURCES AND ASK WHATEVER QUESTIONS YOU THINK ARE APPROPRIATE AT THE ONE TIME.

I AGREE. AND I SPECIFICALLY AT THE TIME OF TRIAL DO NOT WANT IT TO RUN INTO A SITUATION WHERE WE HAVE A WITNESS ON THE STAND WHO CAN BE REPEATEDLY CALLED OR CAN BE RECALLED BY THE MEMBERS OF THE DEFENSE.

I DID INDICATE THAT TO CLARIFY, I'M GOING TO REQUIRE THAT ONCE A WITNESS IS EXAMINED

BY, OR ONE OF THE ATTORNEYS STARTS TO EXAMINE A WITNESS, THAT ATTORNEY HAS TO COMPLETE AND FINISH THAT EXAMINATION.

THE OTHER ATTORNEY CANNOT PARTICIPATE. BUT I'M NOT GOING TO INDICATE THAT ONCE AN ATTORNEY STARTS ONE PHASE OF THE CASE, THAT DIFFERENT ATTORNEYS, INCLUDING IN THAT RESPECT MR. STANSBURY, CANNOT INDIVIDUALLY EACH EXAMINE A SEPARATE WITNESS IF YOU WISH TO DO SO.

IT'S JUST THAT YOU'RE NOT GOING TO HAVE MORE THAN ONE ATTORNEY EXAMINE MORE THAN ONE WITNESS.

[2258] IS THAT CLEAR?

MR. DAUGHERTY: OBVIOUSLY, WE NEVER WANT A SITUATION WHERE WE UNNECESSARILY HAVE TO RECALL A WITNESS.

THERE ARE EXCEPTIONAL SITUATIONS PERHAPS DURING THE TRIAL WHEN IT MAY BE NECESSARY FOR US TO RECALL A WITNESS BECAUSE OF SOME TESTIMONY THAT TAKES PLACE SUBSEQUENT TO THE INITIAL EXAMINATION OF THAT WITNESS.

THE COURT: I UNDERSTAND THAT.

WE'LL CROSS THOSE BRIDGES WHEN WE COME TO THEM IN THIS CASE.

LIEUTENANT JOHNSTON WAS ON THE STAND UP UNTIL YESTERDAY.

YOU RESTED. AND BEFORE THE DAY WAS OUT, HE WAS RECALLED BY ANOTHER MEMBER OF THE DEFENSE TEAM.

AND I WOULD AGREE WITH MR. BURNS. THAT DOES VIOLATE NOT ONLY MY GUIDELINES, BUT I THINK THEY ARE THE SORT OF GUIDELINES THAT MIGHT BE USED IN ANY SORT OF CASE.

I'M NOT TRYING TO ESTABLISH ANY OTHER DIFFERENT GUIDELINES THAN ON ANY OTHER CASE.

I AM GOING TO ALLOW MR. STANSBURY TO COMPLETE THE EXAMINATION OF THIS WITNESS BECAUSE WE STARTED IT.

BUT WE'LL FOLLOW THOSE GUIDELINES IN THE FUTURE.

YOU MAY PROCEED, MR. STANSBURY.

DEFENDANT STANSBURY: THANK YOU, YOUR HONOR.

Q. YOU STATED EARLIER TODAY THAT YUSUF WAS CONSIDERED AS A WITNESS AND A SUSPECT.

IS THAT CORRECT?

[2259] A. NO.

Q. COULD YOU PLEASE REFRESH MY MEMORY THEN AS TO WHAT YOU STATED?

A. POSSIBLE WITNESS, POSSIBLE SUSPECT.

Q. THANK YOU.

I BELIEVE THAT YOU DID CLARIFY THAT I WAS NOT A SUSPECT.

IS THAT CORRECT?

A. YOU WERE NOT A SUSPECT.

Q. VERY WELL.

WHERE WAS YUSUF INTERVIEWED AT?

A. POMONA POLICE DEPARTMENT.

Q. COULD YOU BE A LITTLE MORE SPECIFIC ABOUT THE LOCALITY AND PERHAPS EVEN DESCRIBE IT?

A. IT WAS THE SECOND FLOOR OF THE POMONA POLICE DEPARTMENT INTERVIEW ROOM ADJACENT TO THE DETECTIVE BUREAU.

Q. COULD YOU PERHAPS DRAW SOME TYPE OF A BASIC DIAGRAM TO THE BEST OF YOUR MEMORY AS TO THAT LOCALITY AND THE INTERVIEW ROOM ITSELF.

MR. BURNS: OBJECTION, YOUR HONOR. IRRELEVANT.

AND AGAIN, THIS WHOLE AREA WITH REGARDS TO THE POLICE PRIOR QUESTIONING OF YUSUF IS AN AREA THAT HAS BEEN ASKED AND ANSWERED BY THE DEFENSE TEAM.

IT HAS BEEN COVERED BOTH BY MR. DAUGHERTY BEFORE, AND I BELIEVE MR. STANSBURY THIS MORNING.

BUT THAT MAY NOT BE CORRECT.

AT ANY RATE, MR. DAUGHERTY EXTENSIVELY WENT [2260] INTO THIS AREA.

THE COURT: DO YOU WISH TO MAKE AN OFFER OF PROOF, MR. STANSBURY, WHY YOU THINK THIS TESTIMONY IS DIFFERENT FROM ANY OTHER TESTIMONY THAT WE'VE HEARD PRIOR TO THIS.

AND SECONDLY, HOW IT'S RELEVANT?

DEFENDANT STANSBURY: YOUR HONOR, RELATING TO RELEVANCY, MR. JOHNSTON HAS CLARIFIED THAT IN ADDITION TO BEING A POSSIBLE WITNESS, MR. YUSUF WAS ALSO A POSSIBLE SUSPECT.

HE HAS CLARIFIED THAT I WAS NOTHING MORE THAN A POSSIBLE WITNESS AND DEFINITELY NOT A SUSPECT.

IT WOULD APPEAR FROM MR. JOHNSTON'S STATEMENTS THAT MR. JOHNSTON ESCORTED MR. YUSUF TO A LOCALITY WHICH IS CERTAINLY NOT A SECURITY AREA.

AS I RECALL MR. JOHNSTON'S TESTIMONY YESTERDAY, HE DID SPECIFY HE HAD TO GO FIND SOME KEYS BECAUSE IN FACT IT WAS A LOCKED AREA AS NO ONE WAS THERE.

I, WHILE NOT BEING A SUSPECT FOR SOME REASON WAS CONDUCTED INTO A SECURITY AREA.

I CANNOT QUITE UNDERSTAND THE DIFFERENTIATION THERE AS TO WHY A POSSIBLE WITNESS IS PLACED IN A SECURITY AREA FOR QUESTIONING; WHEREAS A POSSIBLE SUSPECT IS PLACED INTO A NON-SECURITY AREA.

I AM ATTEMPTING TO ESTABLISH THE PURPOSE OF THIS, WHY THIS WAS DONE. IS IT NORMAL, ET CETERA.

I THINK IT IS HIGHLY RELEVANT SINCE WE ARE DEALING WITH A PROBLEM OF A MIRANDA MOTION.

I WAS IN A CUSTODY AREA WHICH HAS ALREADY [2261] BEEN SPECIFIED.

IT WAS SPECIFIED THAT IT IS APPROXIMATELY EIGHT FEET FROM THE BOOKING DESK.

I THINK THAT'S IN RATHER CLOSE PROXIMITY, AND YET FROM THE ASSUMPTION THAT IT APPEARS THAT IT IS BEING OFFERED IN THIS MATTER, IT IS SUPPOSED TO HAVE BEEN ASSUMED THAT I COULD NOT HAVE POSSIBLY ASSUMED THAT I WAS IN CUSTODY IN ANY WAY WHATSOEVER WHILE I'M BEHIND LOCKED DOORS AND HAVE NO ABILITY TO REMOVE MYSELF FROM THAT AREA SINCE I HAD NO KEYS TO ANY OF THE DOORS WHICH -

THE COURT: WAIT A MINUTE, MR. STANSBURY.

RIGHT NOW, YOU'RE TESTIFYING.

DEFENDANT STANSBURY: NO, SIR. I JUST STARTED TO SPECIFY, WHICH HAS BEEN SPECIFIED TO BY MR. JOHNSTON.

THE COURT: MR. STANSBURY, AS I UNDERSTAND THE EVIDENCE, YOU'RE INDICATING THAT YOU DID NOT HAVE THE ABILITY TO LEAVE?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: BUT THAT THE TESTIMONY OF OFFICER JOHNSTON AT THIS POINT, AS I UNDERSTAND IT WAS THAT AT ANY TIME YOU WANTED TO LEAVE, YOU COULD HAVE LEFT HAD YOU ASKED TO LEAVE OR INDICATED YOU WANTED TO LEAVE AND DID NOT WANT TO BE QUESTIONED ANYMORE UP UNTIL THE TIME THEY BOOKED YOU.

IF I MISUNDERSTOOD THAT TESTIMONY YOU MAY WANT TO INQUIRE.

BUT I UNDERSTAND THAT THAT WAS THE TESTIMONY. HIS TESTIMONY THUS FAR.

[2262] DEFENDANT STANSBURY: THEN I WOULD INQUIRE. I SPECIFICALLY REMEMBER GOING FURTHER IN THAT AREA AND ASKING MR. JOHNSTON IF I COULD HAVE LEFT WITHOUT SOMEONE UNLOCKING VARIOUS DOORS FOR ME TO BE ABLE TO LEAVE.

THE COURT: I UNDERSTAND THAT.

THERE'S A DIFFERENCE BETWEEN HAVING TO HAVE SOMEBODY OPEN A DOOR AND WHETHER THEY WOULD OPEN THE DOOR OR NOT.

AND THE TESTIMONY THAT WE HAVE THUS FAR IS THAT OFFICER JOHNSTON SAID THAT YOU WERE FREE TO LEAVE ANY TIME YOU WANTED TO. BUT THAT THE DOOR WAS LOCKED. AND HE HAD A KEY.

AND I DON'T RECALL HIM TESTIFYING OR ANYBODY ASKING WHETHER YOU ASKED TO LEAVE.

NOW, I'M GOING TO SUSTAIN THE OBJECTION TO THAT QUESTION MR. BURNS HAS MADE.

AND IF YOU WISH TO INQUIRE INTO THIS AREA THAT I HAVE JUST MADE REFERENCE TO, IF YOU UNDERSTAND HIS TESTIMONY TO BE DIFFERENT THAN WHAT I HEARD, YOU MAY INQUIRE ALONG THESE LINES.

BY DEFENDANT STANSBURY:

Q. LIEUTENANT JOHNSTON, DID I TO YOUR KNOWLEDGE HAVE ANY KEYS SO THAT I COULD HAVE OPENED THE DOORS MYSELF?

A. MR. STANSBURY, YOU AND I WERE IN THE SAME POSITION IN THAT FACILITY.

I COULD NOT HAVE LEFT THAT FACILITY WITHOUT SOMEBODY OPENING A DOOR FOR ME.

[2263] Q. SIR, YOU WOULD HAVE HAD TO HAVE APPROACHED SOMEONE TO HAVE THE DOORS OPENED?

A. EXACTLY.

Q. AND I WOULD HAVE HAD TO HAVE DONE THE SAME THING?

A. I WOULD HAVE DONE IT ON YOUR BEHALF.

Q. BUT AT NO TIME DID I ASK IN ANYWAY TO BE PERMITTED TO LEAVE TO OBTAIN SOME CIGARETTES?

A. THAT IS CORRECT.

Q. COULD MR. YUSUF HAVE WALKED OUT WITHOUT HAVING TO ASK ANYONE TO OPEN ANY DOORS FOR HIM?

MR. BURNS: YOUR HONOR, AT THIS POINT, I'LL OBJECT, AGAIN ON THE GROUNDS OF ASKED AND ANSWERED, THIS AREA CONCERNING THE RELATIONSHIP BETWEEN -

THE COURT: OVERRULED.

YOU MAY ANSWER THAT QUESTION, OFFICER.

THE WITNESS: YES.

BY DEFENDANT STANSBURY:

Q. SO THEREFORE, THERE WAS SOMEWHAT OF A DIFFERENCE IN SOME WAY THERE, AT LEAST RELATING TO MR. YUSUF AND MYSELF?

MR. BURNS: YOUR HONOR, I'LL OBJECT.

I DON'T KNOW THAT THAT'S A QUESTION.

THE COURT: I DON'T UNDERSTAND THAT QUESTION, MR. STANSBURY.

SUSTAINED.

BY DEFENDANT STANSBURY:

Q. WAS THERE SOME DIFFERENCES IN THAT REGARD [2264] RELATING TO MR. YUSUF AND MYSELF BEING ABLE TO LEAVE?

A. YOU MEAN RELATIVE TO THE -

MR. BURNS: YOUR HONOR, I'LL OBJECT.

IF THE WITNESS DOESN'T UNDERSTAND THE QUESTION, HE DOESN'T UNDERSTAND THE QUESTION.

THE COURT: DO YOU UNDERSTAND THE QUESTION?

THE WITNESS: IN REFERENCE TO THE BUILDING SECURITY?

THE COURT: YOU HAD BETTER CLARIFY IT, MR. STANSBURY.

BY DEFENDANT STANSBURY:

Q. IN REFERENCE TO THE BUILDING SECURITY, I BELIEVE YOU TESTIFIED EARLIER THAT YOU HAD OBTAINED THE KEYS FOR THE UPSTAIRS AREA?

A. NO.

Q. YOU DID NOT. HAD SOMEONE ELSE DONE SO?

A. YES.

Q. AND THEY HAD UNLOCKED THOSE DOORS?

A. THE DOOR TO THE INTERVIEW ROOM WAS THE ONLY DOOR THAT I CAN RECALL REQUIRED UNLOCKING.

Q. WOULD THAT HAVE BEEN THE DOOR LEADING DIRECTLY INTO THE DETECTIVE OFFICES AREA?

I BELIEVE YOU SPECIFIED IT WAS A DETECTIVE BUREAU AREA OR SOMETHING OF THAT NATURE?

A. THE INTERVIEW ROOM WAS ADJACENT TO THE DETECTIVE BUREAU.

I DIDN'T TESTIFY THAT IT WAS IN THE DETECTIVE BUREAU.

[2265] Q. COULD YOU CLARIFY ADJACENT THEN?

A. THE DOOR THAT WE ACCESSED, TO THE BEST OF MY RECOLLECTION, WAS IN A CORRIDOR UPSTAIRS.

AS FAR AS I KNOW, THE ADJACENT ROOMS OFF THAT CORRIDOR COMPRISE THE DETECTIVE BUREAU OF THE POMONA POLICE DEPARTMENT.

Q. IN THE ROOM WHICH YOU ENTERED FOR THE PURPOSE OF QUESTIONING MR. YUSUF, WERE THERE SMALL CUBICLES ALONG THE WALL ON ONE SIDE OF THE OTHER OR ANYTHING LIKE THAT WITHIN THAT ROOM?

A. NO.

Q. DID YOU SEE ANY OPENINGS OR DOORWAYS ON ANY SIDES OF THE WALL WITHIN THAT ROOM?

A. MR. STANSBURY, THAT ROOM WAS AN INTERVIEW ROOM.

IT HAD THE DOOR SO YOU COULD GET INTO THAT ROOM.

IT WAS NO BIGGER THAN AN INTERVIEW ROOM.

IT WAS NOT A ROOM WITH ADJACENT ROOMS OFF OF IT WITH SMALLER CUBICLES WITHIN IT.

IT WAS AN INTERVIEW ROOM.

Q. PERHAPS I'M LABORING UNDER A MISCOMPREHENSION, MR. JOHNSTON, BECAUSE

APPROXIMATELY TEN YEARS AGO I WAS CONVICTED OF -

THE COURT: JUST ASK THE QUESTION, MR. STANSBURY. IF YOU HAVE A QUESTION.

BY DEFENDANT STANSBURY:

Q. POSSIBLY MY MEMORY IS VERY VAGUE IN THAT, MR. [2266] JOHNSTON.

ARE YOU SAYING THAT THE INTERVIEW ROOMS ARE ALL ALONG THE CORRIDOR WITHIN THAT AREA?

MR. BURNS: YOUR HONOR, I'LL OBJECT AS IRRELEVANT AT THIS POINT IN TIME AND - JUST IRRELEVANT.

THE COURT: OVERRULED.

THE WITNESS: I CAN ONLY ADDRESS MY RECOLLECTION OF ONE INTERVIEW ROOM IN THAT FACILITY THAT I WAS EXPOSED TO FOR APPROXIMATELY 5 TO 10 MINUTES TWO YEARS AGO.

OTHER INTERVIEW ROOMS, OR WHAT OTHER REFERENCES YOU'RE MAKING I HAVE NO KNOWLEDGE OF.

Q. WAS THAT INTERVIEW ROOM THAT YOU ARE SPEAKING OF A ROOM WITHIN A LARGER ROOM?

A. NO.

Q. BUT THERE WAS A LOCKED DOOR ON THAT ROOM?

A. AS I RECALL.

Q. UPON UNLOCKING THAT DOOR AND ALLOWING MR. YUSUF AND WHOEVER ELSE WENT IN FOR THE PURPOSE OF INTERVIEWING HIM, DID YOU RELOCK THAT DOOR AFTER MR. YUSUF WENT IN?

A. I DID NOT HAVE A KEY TO THAT DOOR.

Q. DID ANYONE ELSE RELOCK THAT DOOR THAT YOU RECALL?

A. THE PERIOD OF TIME I WAS PRESENT AT THAT INTERVIEW ROOM WITH MR. YUSUF THAT DOOR WAS OPEN.

Q. WOULD YOU HAVE BEEN - WERE YOU ABLE TO ENTER INTO THE FRONT DOOR OF THE POLICE BUILDING OR OFFICE DOWNSTAIRS AT THE DESK WITHOUT ANY KEY?

[2267] A. NO.

Q. SOMEONE HAD TO COME IN AND LET YOU IN, OR YOU KNOCKED ON THE DOOR OR WHAT?

A. YOU CAN ENTER THE LOBBY AREA, THE PUBLIC LOBBY AREA?

Q. RIGHT.

A. ANY MOVEMENT FURTHER INTO THE BUILDING REQUIRED PASSAGE BY SOME MEANS THROUGH SOME TYPE OF SECURITY DOOR.

Q. TO WHICH YOU OR SOME OF THE PEOPLE WITH YOU HAD OBTAINED THE KEYS?

A. NO.

Q. WOULD YOU SPECIFY THAT IT WAS UPSTAIRS.

COULD YOU PLEASE EXPLAIN FOR US HOW YOU MANAGED TO GET FROM THE LOBBY AREA DOWNSTAIRS DOWN TO THE INTERROGATION ROOM UPSTAIRS?

A. TO THE BEST OF MY RECOLLECTION THERE IS A STAIRWAY. OBVIOUSLY, THERE HAS TO BE.

THERE IS ONE PUBLIC STAIRWAY OFF THE LOBBY. AND THERE IS, I RECALL ANOTHER STAIRWAY WITHIN THE SECURITY AREA OF THE BUILDING.

WHICH STAIRWAY WE USED, I DON'T RECALL.

IN FACT, THERE MAY EVEN BE AN ELEVATOR IN THAT BUILDING.

HOW WE GOT TO THE SECOND FLOOR, WE WERE LED, AND I DIDN'T NECESSARILY RECORD THE DIRECTION.

Q. I CAN UNDERSTAND THAT.

WOULD YOU HAVE RECALLED ANYONE USING ANY KEYS [2268] WHILE -

A. A POMONA POLICE OFFICER HAD TO OPEN AT LEAST THE INTERVIEW ROOM DOOR.

AND WHETHER OR NOT WE ENTERED THROUGH THE BUILDING ITSELF FROM THE LOBBY AREA BY SOMEBODY OPENING A DOOR FOR US,

HITTING AN ELECTRIC DOOR RELEASE OR EXACTLY WHAT, I DO NOT RECALL.

Q. AND YOU DO NOT RECALL WHETHER YOU USED THE OTHER STAIRWAY OR THE PUBLIC STAIRWAY?

A. THAT'S CORRECT.

Q. DO YOU RECALL THAT PARTICULAR OFFICER WHO LED YOU?

A. NO.

Q. WOULD YOU HAVE ANY WAY OF BEING ABLE TO FIND OUT WHO THAT OFFICER WAS?

A. NO.

Q. DO YOU THINK THAT THERE MIGHT BE SOME TYPE OF A LOGBOOK WHICH MAY REGISTER THE NAME OF THAT OFFICER WHO WAS ON DUTY IN THAT LOCALITY AT THAT TIME?

MR. BURNS: OBJECT, ON DOUBLE LAYER SPECULATION. "DO YOU THINK THERE MIGHT BE?"

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. BUT YOU DO RECALL THAT THE AREA I WAS INTERVIEWED IN WAS DEFINITELY A SECURITY AREA?

A. YES, SIR.

Q. WAS THERE ANY UNUSUAL CIRCUMSTANCES THERE THAT CAUSED YOU TO REMEMBER THAT ONE THING AND NOT THE [2269] OTHER?

THE COURT: WHAT OTHER? I DON'T UNDERSTAND YOUR QUESTION.

DEFENDANT STANSBURY: OF MR. YUSUF'S INTERVIEW -

THE COURT: ASK IT AGAIN.
BY DEFENDANT STANSBURY:

Q. WOULD THERE BE ANYTHING IN RELATION TO THE INTERVIEW OF MYSELF WHICH CAUSED YOU TO REMEMBER THE INTERVIEW OF MYSELF MORE ACCURATELY THAN THAT OF THE INTERVIEW OF MR. YUSUF?

MR. BURNS: OBJECTION, YOUR HONOR.

THERE HAS BEEN NO INDICATION THAT THIS OFFICER WAS PRESENT DURING THE INTERVIEW OF MR. YUSUF NOR THAT HE HAD ANY RECOLLECTION AS TO THE INTERVIEW OF MR. YUSUF TO COMPARE IT TO THE ACTUAL INTERVIEW WITH MR. STANSBURY.

THERE HAS BEEN NO INDICATION THAT HE HAS NO DIFFERENT RECOLLECTION ON IT.

THE COURT: SUSTAINED.

IT ASSUMES FACTS THAT ARE NOT IN EVIDENCE. IF YOU WISH TO INQUIRE, YOU MAY.

BY DEFENDANT STANSBURY:

Q. DETECTIVE JOHNSON, DID YOU EARLIER SPECIFY THAT YOU HAD BEEN PRESENT DURING THE BEGINNING OF THE INTERVIEW OF MR. YUSUF?

A. DURING OR -

Q. DURING THE BEGINNING OF THE INTERVIEW?

A. YES.

[2270] Q. SO YOU HAD GONE THERE WITH MR. YUSUF DURING THAT PORTION OF THE TIME?

A. YES.

Q. AND YOU HAD FOLLOWED PRESUMABLY THE SAME ROUTE MR. YUSUF CONDUCTED?

A. CERTAINLY.

Q. WERE YOU PRESENT WHEN I WAS BROUGHT THROUGH THE STATION, MR. JOHNSTON?

A. I WAS PRESENT IN THAT I WAS IN THE SAME BUILDING YOU WERE BROUGHT INTO.

Q. BUT YOU DID NOT ACTUALLY SEE ME BROUGHT IN?

A. THAT IS CORRECT.

Q. THEREFORE, YOU ARE, I PRESUME SAYING THAT YOU HAVE NO KNOWLEDGE OF THE ROUTE THAT I WAS TAKING?

A. ONLY AS IT WAS RELATED TO ME BY THE BALDWIN PARK OFFICERS.

Q. DID BALDWIN PARK OFFICERS TELL YOU SPECIFICALLY WHAT ROUTE THEY BROUGHT ME INTO THE BUILDINGS?

MR. BURNS: I'LL OBJECT AS HEARSAY.

THE COURT: OVERRULED.

THAT QUESTION CAN BE ANSWERED YES OR NO?

THE WITNESS: THEY INDICATED TO ME THAT THEY HAD BROUGHT YOU IN THROUGH THE BACK STAIRS, DOWNSTAIRS BACK DOOR, EXTERIOR DOOR IMMEDIATELY OFF OF THE INTERVIEW ROOM.

Q. HAD YOU BEEN IN OR OUT OF THAT DOOR YOURSELF?

A. MAYBE ONCE.

Q. COULD YOU RECALL ANYTHING ABOUT THAT SPECIFIC [2271] AREA AS TO WHAT IT LOOKED LIKE OR ANYTHING OF THAT NATURE?

A. NO.

Q. SINCE YOU WERE PRESENT DURING AT LEAST THE BEGINNING OF THE INTERVIEW WITH MR. YUSUF AND WERE NOT PRESENT DURING MY ARRIVAL BUT SHORTLY, WERE THERE - SHORTLY THEREAFTER, WAS THERE ANYTHING WITHIN THAT PARTICULAR TIME SPAN THAT CAUSED YOU TO RECALL THE INTERVIEW WITH ME MORE SPECIFICALLY THAN MR. YUSUF AS FAR AS SECURITY AREAS AND SO FORTH?

MR. BURNS: OBJECTION, YOUR HONOR. I DON'T UNDERSTAND WHAT THE QUESTION MEANS.

DEFENDANT STANSBURY: I'LL WITH-
DRAW THE QUESTION, YOUR HONOR.

THE COURT: YOU MAY.

BY DEFENDANT STANSBURY:

Q. BUT YOU WERE AWARE THAT I WAS BEING INTERVIEWED IN A SECURITY AREA?

A. OF COURSE.

Q. WHY WAS I NOT TAKEN UPSTAIRS TO A NON SECURITY AREA SINCE I WAS ONLY A POSSIBLE WITNESS?

MR. BURNS: OBJECTION, YOUR HONOR.

IRRELEVANT AT THIS POINT IN TIME.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT IF YOU KNOW?

THE WITNESS: BALDWIN PARK SELECTED TO BRING YOU INTO THAT AREA OF THE FACILITY FOR WHATEVER REASON THEY DEEMED APPROPRIATE.

THE COURT: DO YOU HAVE ANY VOICE IN THAT DECISION?

[2272] THE WITNESS: NO, SIR.

BY DEFENDANT STANSBURY:

Q. I BELIEVE YOU WERE ESCORTED AROUND BY DETECTIVE BELL AS FAR AS DRIVING AND SO FORTH?

A. SHE TRANSPORTED US TO POMONA TO THE YUSUF RESIDENCE AND THEN TO THE POMONA POLICE DEPARTMENT, YES.

Q. DURING THAT TIME UPON ARRIVING WITH MR. YUSUF AT THE INTERROGATION ROOM, HAD YOU SO DESIRED, HAD ACCESS TO A TELEPHONE?

MR. BURNS: OBJECTION, YOUR HONOR, ON GROUNDS OF RELEVANCE. I OBJECT ON GROUNDS OF RELEVANCE.

THE COURT: HOW IS THAT RELEVANT?

DEFENDANT STANSBURY: I'M ATTEMPTING TO SHOW, YOUR HONOR, THAT MR. JOHNSTON COULD HAVE VERY CONCEIVELY [sic], HAD HE CHOSEN TO DO SO, GOTTEN IN CONTACT WITH THE BALDWIN PARK POLICE OFFICERS IN QUESTION TO GIVE THEM SPECIFIC DIRECTIONS ON WHERE THEY COULD HAVE BROUGHT ME.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU HAVE ANY MEANS OF CONTACT WITH THE OFFICERS IN QUESTION?

MR. BURNS: OBJECTION, YOUR HONOR.

AGAIN, IRRELEVANT.

THE COURT: I'M SORRY. DID I UNDERSTAND THE QUESTION?

YOU SAY THE OFFICERS IN QUESTION. I DON'T KNOW WHO YOU WERE TALKING ABOUT.

DEFENDANT STANSBURY: VERY WELL.

[2273] Q. DID YOU HAVE ANY SPECIFIC CONTACT WITH POLICE OFFICERS, JOSEPH LEE, POLICE

OFFICER HIGGENBOTHAM, POLICE OFFICER GRAY, POLICE OFFICER MULCAHY -

THE COURT: NOW, ARE YOU ASKING THAT QUESTION BEFORE YOU WERE TAKEN TO THE STATION, AFTER YOU WERE TAKEN TO THE STATION, ON THAT SAME DAY, THE DAY BEFORE, THE DAY AFTER?

WHAT IS YOUR TIME FRAME?

DEFENDANT STANSBURY: SEPTEMBER THE 29TH, OF 1982, YOUR HONOR, SOMETIME IN THE NEIGHBORHOOD OF 10, OR CALL IT 9:00 P.M. TO 11:00 P.M.

[2274] THE COURT: NOW, DO YOU UNDERSTAND THAT QUESTION?

THE WITNESS: NO, SIR.

THE COURT: ASK ANOTHER QUESTION.

BY DEFENDANT STANSBURY:

Q. DURING THE TIME FRAME OF 9:00 P.M. TO 11:00 P.M. ON SEPTEMBER THE 29TH OF 1982, WERE YOU IN CONTACT WITH ANY OF THOSE FOUR SPECIFIC OFFICERS?

A. YES.

Q. SO YOU DID HAVE CONTACT WITH THEM ON THAT DAY.

COULD YOU EXPLAIN HOW?

A. CERTAINLY, IN THE NEIGHBORHOOD OF 9:30 OR 10 O'CLOCK WE WERE AT THE SAME LOCATION

IN POMONA ON DUDLEY, I BELIEVE, IN THE PRESENCE OF THOSE PEOPLE.

Q. DID YOU HAVE ANY MEANS OF CONTACTING THEM AFTER LEAVING THEM AT THAT LOCATION?

MR. BURNS: OBJECTION, YOUR HONOR, IRRELEVANT WHETHER HE HAD A MEANS OF COMMUNICATION OR NOT.

THE COURT: WHY DON'T YOU ASK IF HE DID COMMUNICATE.

BY DEFENDANT STANSBURY:

Q. DID YOU COMMUNICATE WITH HIM AFTER THAT?

A. NO.

Q. WOULD YOU HAVE BEEN ABLE TO DO SO IF YOU SO DESIRED?

MR. BURNS: OBJECTION, IRRELEVANT.

THE COURT: SUSTAINED.

[2275] BY DEFENDANT STANSBURY:

Q. HOW LONG WAS IT AFTER YOU HAD STARTED THE INTERVIEW WITH MR. YUSUF BEFORE YOU WERE NOTIFIED THAT I HAD BEEN BROUGHT IN?

MR. BURNS: OBJECTION, ASKED AND ANSWERED.

HE'S ALREADY INDICATED HOW LONG HE WAS WITH MR. YUSUF BEFORE HE LEFT.

THE COURT: EXCUSE ME.

WOULD YOU READ THE QUESTION BACK. I DIDN'T HEAR ALL THE QUESTION.

(LAST QUESTION WAS READ BACK.)

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: TWO MINUTES.

BY DEFENDANT STANSBURY:

Q. SINCE YOU WERE ALREADY WITHIN THAT AREA, WOULD IT HAVE NOT BEEN MORE EXPEDIENT TO SIMPLY HAVE ME BROUGHT UPSTAIRS?

MR. BURNS: OBJECTION, IRRELEVANT.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. WHAT DID YOU DO UPON BEING INFORMED THAT I WAS THERE?

MR. BURNS: YOUR HONOR, I'LL OBJECT AGAIN.

THIS HAS BEEN ASKED BY MR. DAUGHERTY AND I BELIEVE BY MR. STANSBURY; CERTAINLY BY MR. DAUGHERTY.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: WHY THEN COULD THE COURT [2276] REPORTER TELL ME WHAT THE ANSWER WAS SINCE I DON'T RECALL WHAT THE ANSWER WAS.

MR. BURNS: YOUR HONOR, I DON'T BELIEVE THAT'S THE FUNCTION OF THE COURT REPORTER. THE TESTIMONY IS ON THE RECORD.

THE COURT: READ THAT QUESTION BACK TO ME, WOULD YOU, HIS QUESTION.

(THE LAST QUESTION WAS READ BACK.)

THE COURT: I'M GOING TO REVERSE, IN ORDER TO EXPEDITE.

YOU MAY ANSWER THAT QUESTION.

THE WITNESS: CAME DOWNSTAIRS.

BY DEFENDANT STANSBURY:

Q. DID YOU COME DOWNSTAIRS, DETECTIVE JOHNSTON FOR THE PURPOSE OF INTERVIEWING ME PERSONALLY?

A. FOR ME TO PERSONALLY INTERVIEW YOU?

Q. YES?

A. YES.

Q. AND YET AT THAT TIME, IF I UNDERSTAND YOU CORRECTLY, MR. YUSUF WAS THE ONLY ONE WHO HAD ANY RELATION OF A POSSIBILITY OF BEING A SUSPECT AT THAT TIME BETWEEN HIMSELF AND MYSELF?

MR. BURNS: YOUR HONOR, I'LL OBJECT.

IT'S ASKED AND ANSWERED. WE'VE GONE INTO THIS AREA I DON'T KNOW HOW MANY TIMES. I DON'T SEE THE RELEVANCY.

THE COURT: IT'S ARGUMENTATIVE.

MR. BURNS: IT'S ARGUMENTATIVE, YES.

[2277] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DID YOU CLARIFY THAT MR. YUSUF WAS A POSSIBLE SUSPECT AND THAT I WAS NOT.

COULD YOU EXPLAIN WHY YOU CHOSE TO PERSONALLY CONDUCT AN INTERVIEW WITH ME RATHER THAN MR. YUSUF WHERE YOU WERE ALREADY LOCATED?

MR. BURNS: OBJECTION, YOUR HONOR, ARGUMENTATIVE.

IT'S IRRELEVANT.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT.

THE WITNESS: I SAID THAT YOU WERE NOT A SUSPECT, MR. STANSBURY. BUT I DIDN'T EXCLUDE YOU FROM BEING A POSSIBLE SUSPECT.

ANYBODY THAT WAS PRESENT IN BALDWIN PARK AT THE TIME IN QUESTION WAS A POSSIBLE WITNESS AS WELL AS A POSSIBLE SUSPECT.

DEFENDANT STANSBURY: I UNDERSTAND THAT, MR. JOHNSTON.

BY DEFENDANT STANSBURY:

Q. WHO WAS IN CHARGE OF THE CASE AT THAT TIME IN THAT PARTICULAR AREA?

A. WELL, I MAY RECEIVE SOME ARGUMENT FROM SERGEANT PATTERSON HE WAS THE SAME RANK THAT I WAS, BUT I FELT I WAS THE LEAD INVESTIGATOR.

Q. YOU DID FEEL YOU WERE THE LEAD INVESTIGATOR, SO THEREFORE IT WAS YOUR PREROGATIVE ON WHO YOU CHOSE TO INTERVIEW, ET CETERA?

[2278] MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT ON THE GROUNDS OF RELEVANCE, UNLESS THERE WAS SOME CLEAR UNDERSTANDING, I DON'T UNDERSTAND WHAT IMPORTANCE THIS HAS.

THE OFFICER ALREADY INDICATED THERE WERE TWO OFFICERS OF THE SAME RANK ON THE SAME ASSIGNMENT.

THE COURT: SUSTAINED.
BY DEFENDANT STANSBURY:

Q. WAS THERE ANY DISCUSSION BETWEEN YOURSELF AND DETECTIVE PATTERSON AS TO WHO WOULD INTERVIEW WHO?

MR. BURNS: OBJECTION, ON THE GROUND OF RELEVANCY AND ALSO ON HEARSAY.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: YOUR HONOR, I WOULD OBJECT BECAUSE OF THE FACT THAT I FEEL -

THE COURT: I'VE ALREADY RULED. THE RECORD'S CLEAR.

I SUSTAINED IT. GO ON TO YOUR NEXT QUESTION.

BY DEFENDANT STANSBURY:

Q. WERE THERE ANY SPECIAL REASONS OR ORDERS FROM YOU FOR SERGEANT HIGGENBOTHAM TO AWAIT YOUR ARRIVAL BEFORE CONTACTING MR. YUSUF?

MR. BURNS: OBJECTION, YOUR HONOR, HEARSAY AND IRRELEVANT.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT.

THE WITNESS: SERGEANT HIGGENBOTHAM I DON'T BELIEVE WAS RESTRAINED BY ME FROM SPEAKING TO YUSUF.

[2279] HOWEVER, HE MAY HAVE ASSUMED THAT BECAUSE I ADVISED HIM THAT WE WANTED TO TALK TO MR. YUSUF -

MR. BURNS: OBJECTION, MOTION TO STRIKE THIS WITNESS' RESPONSE AS TO WHAT MR. HIGGENBOTHAM MAY OR MAY NOT HAVE ASSUMED IS SPECULATION.

THE COURT: GRANTED.

BY DEFENDANT STANSBURY:

Q. ARE YOU SAYING THERE WAS ROOM WITHIN YOUR INSTRUCTIONS FOR SPECULATION OR ASSUMPTION ON THE PART OF SERGEANT HIGGENBOTHAM?

MR. BURNS: YOUR HONOR, ON THE GROUNDS OF RELEVANCY AND BEYOND THE SCOPE OF THIS PERSON'S KNOWLEDGE AS TO WHAT HE MAY OR MAY NOT HAVE SPECULATED.

THE COURT: GRANTED.

BY DEFENDANT STANSBURY:

Q. UPON THE ARRIVAL OF THE LOCATION OF MR. YUSUF, DID YOU HAVE ANY CONVERSATION WITH THE OTHER OFFICERS OR INVESTIGATORS ALREADY THERE?

MR. BURNS: YOUR HONOR, THAT ANSWER - QUESTION CAN BE ANSWERED YES OR NO.

THE COURT: IF YOU WOULD, OFFICER, IF YOU UNDERSTAND THE QUESTION.

THE WITNESS: YES, I HAD DISCUSSION WITH HIM.

BY DEFENDANT STANSBURY:

Q. COULD YOU CLARIFY FOR US WHO THAT DISCUSSION WAS WITH?

MR. BURNS: I'M SORRY, YOUR HONOR.

WAS THAT QUESTION: WHO IT WAS WITH?

[2280] THE COURT: YES.

THE WITNESS: I HAD A DISCUSSION WITH SERGEANT HIGGENBOTHAM AND A DISCUSSION WITH DETECTIVE LEE.

BY DEFENDANT STANSBURY:

Q. BUT YOU DON'T RECALL WHERE SERGEANT HIGGENBOTHAM WAS ACTUALLY AT THAT TIME?

A. AT THE TIME OF THE DISCUSSION, I DO.

Q. WHERE WAS HE AT, AT THAT TIME?

A. ON A STREET INTERSECTING THE STREET THAT THE APARTMENT BUILDING IN QUESTION WAS LOCATED.

Q. WHICH WOULD HAVE BEEN APPROXIMATELY HOW FAR FROM WHERE MR. YUSUF'S APARTMENT DOOR WAS LOCATED?

A. IT WOULD BE DIFFICULT FOR ME TO RECALL DISTANCES AT THIS TIME.

Q. COULD YOU GIVE US AN APPROXIMATION?

MR. BURNS: YOUR HONOR, I'LL OBJECT ON THE GROUNDS OF RELEVANCY TO THE MIRANDA MOTION, WHERE THEIR CONVERSATION WITH MR. HIGGENBOTHAM WAS IN RELATIONSHIP TO HOW FAR IT IS TO THE FRONT DOOR OF MR. YUSUF'S APARTMENT, I DON'T SEE WHAT RELEVANCE AT ALL THAT HAS TO THIS MOTION.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DURING THE CONVERSATION WITH MR. HIGGENBOTHAM AND JOSEPH LEE, COULD YOU PLEASE CLARIFY WHAT THAT CONVERSATION WAS?

MR. BURNS: OBJECTION, CALLS FOR HEARSAY, AS TO RELEVANCE.

THE COURT: SUSTAINED.

[2281] BY DEFENDANT STANSBURY:

Q. COULD YOU SPECIFY WHAT YOU STATED TO SERGEANT HIGGENBOTHAM AND JOSEPH LEE AT THAT TIME?

MR. BURNS: OBJECTION, SAME GROUNDS, HEARSAY AND IRRELEVANT.

THE COURT: OVERRULED. YOU MAY ANSWER THAT, OFFICER.

THE WITNESS: YOU'RE ASKING WHAT I SAID TO SERGEANT HIGGENBOTHAM AND DETECTIVE LEE.

BOTH OF THOSE PERSONS WERE NOT PRESENT ON THAT CONVERSATION WITH SERGEANT HIGGENBOTHAM.

BY DEFENDANT STANSBURY:

Q. WELL, THEN COULD YOU PLEASE EXPLAIN TO US WHAT YOU SAID TO EACH OF THEM ON THE SEPARATE TIMES EACH OF THEM WAS PRESENT IN FRONT OF YOU?

MR. BURNS: YOUR HONOR, I'LL OBJECT ON THE GROUNDS OF RELEVANCY. WHAT CONVERSATION WHEN THEY ARRIVED AT A LOCATION OUTSIDE OF YUSUF'S APARTMENT HAS ABSOLUTELY NO RELEVANCY TO THIS CASE, ABSENT THE DEFENDANT OFFERING SOME OFFER OF PROOF AS TO RELEVANCY.

I THINK HE'S CLEARLY GOING ON A FISHING EXPEDITION AT THIS POINT.

HE DOESN'T EVEN KNOW WHAT RELEVANCY HE CAN HAVE TO THIS THING.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT, IF YOU RECALL.

THE WITNESS: I ASKED SERGEANT HIGGENBOTHAM WHERE YUSUF'S APARTMENT WAS RELATIVE TO WHERE WE WERE.

[2282] AND HE INDICATED AN APARTMENT BUILDING COMPLEX AND ADVISED ME HE DIDN'T KNOW WHERE WITHIN THAT PARTICULAR COMPLEX MR. YUSUF'S PARTICULAR APARTMENT WAS.

SHOULD I GO ON?

BY DEFENDANT STANSBURY:

Q. YOUR DISCUSSION WITH MR. LEE?

A. UPON ENTERING THE APARTMENT COMPLEX, I WAS ADVISED BY MR. LEE AND DIRECTED BY HIM TO MR. YUSUF'S APARTMENT.

Q. DID YOU THEN OR LATER GIVE OTHER INSTRUCTIONS TO MR. HIGGENBOTHAM OR MR. LEE RELATING TO ME?

A. YES.

Q. COULD YOU TELL US WHAT THOSE INSTRUCTIONS WERE?

MR. BURNS: YOUR HONOR, I'LL OBJECT AT THIS POINT. BECAUSE THIS HAS BEEN ASKED AND

ANSWERED BY MR. DAUGHERTY EXTENSIVELY AS TO WHAT INSTRUCTIONS HE ASKED OF THIS WITNESS, ALSO BEEN ASKED OF OFFICER HIGGENBOTHAM.

WE'RE GOING INTO THE SAME AREAS REPEATEDLY FOR NO REASONABLE GOOD REASON.

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: I REQUESTED THAT SERGEANT HIGGENBOTHAM GO TO AN ADDRESS ON MISSION BOULEVARD, ASCERTAIN IF MR. ROBERT STANSBURY WAS PRESENT AT THAT LOCATION AND IF HE WAS TO ASK MR. STANSBURY IF HE WOULD MIND RESPONDING TO THE POMONA POLICE DEPARTMENT IN ORDER THAT WE MIGHT CONDUCT AN INTERVIEW WITH HIM.

[2283] FURTHER, IF MR. STANSBURY DID NOT HAVE TRANSPORTATION, THAT THEY WERE TO TRANSPORT HIM.

BY DEFENDANT STANSBURY:

Q. WAS THERE ANY SPECIAL REASON FOR YOU TO GO WITH MR. YUSUF RATHER THAN COMING TO FIND ME?

MR. BURNS: OBJECTION ON THE GROUNDS OF RELEVANCE.

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: I FELT THEY WERE CAPABLE OF FOLLOWING THOSE DIRECTIONS.

BY DEFENDANT STANSBURY:

Q. DID YOU GIVE THEM ANY INSTRUCTIONS RELATING TO THEIR APPROACH OF THAT AREA?

A. NO.

Q. WHEN YOU ARRIVED AT MR. YUSUF'S LOCATION, WHAT DID YOU DO UPON YOUR ARRIVAL?

A. SPOKE TO SERGEANT HIGGENBOTHAM, ENTERED THE COMPLEX, SPOKE TO DETECTIVE LEE, WENT TO THE FRONT DOOR OF THE YUSUF APARTMENT.

Q. WERE YOU FAMILIAR WITH THAT AREA?

A. NO.

Q. HAD YOU EVER BEEN THERE BEFORE?

A. NO.

Q. YOU DID NOT AT ANYTIME REMOVE YOUR GUN FROM YOUR HOLSTER?

A. I DID NOT.

Q. DID ANY OF THE OTHER DETECTIVES PRESENT HAVE THEIR GUNS OUT?

[2284] A. NOT THAT I SAW.

Q. TO YOUR KNOWLEDGE, WERE ANY OF THEM KNOWLEDGEABLE OF THAT AREA?

MR. BURNS: OBJECTION, YOUR HONOR - WELL, TO HIS KNOWLEDGE.

THE WITNESS: I DON'T KNOW.

BY DEFENDANT STANSBURY:

Q. BUT YOU SAW NO ONE WITH THEIR GUNS DRAWN FROM THEIR HOLSTERS?

A. THAT'S CORRECT.

Q. WAS THERE ANY CONVERSATIONS THAT YOU WERE A DIRECT PARTY TO RELATING TO HOW TO APPROACH THE APARTMENT COMPLEX IN THE BUILDING IN WHICH MR. YUSUF WAS LOCATED?

A. I DON'T YOU UNDERSTAND THAT QUESTION.

Q. RELATING TO DEPLOYMENT OF THE OFFICERS INVOLVED?

A. NO.

Q. SO BASICALLY YOU JUST WALKED UP TO THE DOOR AND KNOCKED ON THE DOOR?

A. YES.

DEFENDANT STANSBURY: I DON'T HAVE ANY FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

MR. BURNS: NO FURTHER QUESTIONS.

THE COURT: THANK YOU, OFFICER.

YOU MAY STEP DOWN.

MR. BURNS: FOR THE RECORD, MAY THIS WITNESS BE EXCUSED ON THIS MOTION?

THE COURT: ANYTHING FURTHER OF THIS WITNESS, [2285] GENTLEMEN?

MR. DAUGHERTY: I DON'T BELIEVE MR. ROBUSTO WANTS TO RECALL HIM AGAIN.

SO WE WOULD EXCUSE HIM.

THE COURT: OFFICER JOHNSTON MAY BE EXCUSED ON THIS MOTION.

DEFENDANT STANSBURY: AT THIS TIME, YOUR HONOR, I WOULD LIKE TO CALL OFFICER GRAY TO THE STAND.

MR. DAUGHERTY: LET'S NOT CALL OFFICER GRAY RIGHT NOW.

CALL MILLER.

MR. DAUGHERTY:

DEFENDANT STANSBURY: BECAUSE OFFICER GRAY'S TESTIMONY COMES FIRST.

THE COURT: WE'LL TAKE A SHORT RECESS.

MR. DAUGHERTY: ANOTHER THING I WANTED TO INDICATE.

MR. STANSBURY HAS REQUESTED HE WANTED A PARTICULAR VIDEOTAPE RECORDING SHOWN TO THE COURT AS PART OF THIS MOTION.

AND PURSUANT TO HIS REQUEST, MR. BENART HAS BROUGHT THE TAPE AND WE HAVE RENTED THE EQUIPMENT TO SHOW IT TO THE COURT AND IT COSTS MONEY EACH DAY.

I WOULD LIKE TO DO IT THIS AFTERNOON IF POSSIBLE.

THE COURT: HOW LONG IS IT GOING TO TAKE TO SHOW THE TAPE, FIRST?

MR. DAUGHERTY: THERE'S ONLY ONE PORTION OF THE TAPE, ONE SMALL PORTION OF THE TAPE. THE ENTIRE TAPE IS [2286] 20 MINUTES. I BELIEVE THERE'S ONE PORTION OF IT HE WANTS THE COURT TO SEE.

MR. BURNS: YOUR HONOR, I DON'T KNOW WHAT THE RELEVANCE OF THE TAPE IS. UNTIL IT'S LAID I'LL PROBABLY HAVE SOME QUESTIONS ABOUT IT.

I DON'T KNOW WHAT THE TAPE HAS TO DO WITH ANYTHING.

THE COURT: ALL RIGHT, GENTLEMEN.

WHAT'S THE TAPE - DO YOU KNOW, GENTLEMEN WHAT THE TAPE IS?

MR. DAUGHERTY: YES, I BELIEVE IT'S - THE - THAT WHICH HE IS SPECIFICALLY INTERESTED IN THE COURT SEEING IS A TAPE RECORDING OF DEPUTY WILLIE MILLER MAKING THE STATEMENT ON TELEVISION TO THE GENERAL PUBLIC REGARDING THIS CASE.

MR. BURNS: YOUR HONOR -

MR. DAUGHERTY: THAT STATEMENT ITSELF IS A VERY BRIEF STATEMENT BUT IT'S CONTAINED ON A 20 MINUTE TAPE.

WILLIE MILLER IS ALSO A WITNESSES HERE THAT MR. STANSBURY WISHES TO CALL.

THE COURT: YOU WANT TO SHOW THE TAPE BEFORE OR AFTER?

MR. DAUGHERTY: I JUST WOULD LIKE TO BE ABLE TO RETURN THE TAPERECORDER TONIGHT AND SAVE ANOTHER DAY'S EXPENSE.

THE COURT: FINE.

DO YOU HAVE THE EQUIPMENT TO SET UP TO SEE IT BEFORE WE RULE ON IT?

[2287] MR. BURNS: YOUR HONOR, I WOULD INDICATE FOR THE RECORD BASED ON MY CONVERSATION WITH WILLIE MILLER I DON'T THINK SHE HAS ANYTHING RELEVANT OR ADMISSIBLE TO TESTIFY TO ON THIS MOTION.

IF THAT IS TRUE, THEN CERTAINLY ANY TAPE OF HER PRIOR STATEMENTS WOULD BE ALSO OBJECTIONABLE TO AS IRRELEVANT.

THE COURT: WELL -

MR. BURNS: WE'RE TALKING IN THE DARK AT THIS POINT. I'M NOT AWARE OF ANY RELEVANCE AT THIS POINT.

THE COURT: I CAN SEE HOW THE TAPE MIGHT BE RELEVANT.

MR. BURNS: DEPENDING ON WHAT SHE SAID.

THE COURT: AND SO I'M GOING TO WATCH THAT PORTION OF THE TAPE THAT HE WANTS ME TO SEE.

MR. BURNS: I WOULD SUGGEST WE HAVE HER TESTIMONY FIRST SO THAT WE CAN MAKE A DETERMINATION AS TO WHETHER IT'S NECESSARY TO SEE THE TAPE.

THAT'S ALL I'M SUGGESTING.

MR. DAUGHERTY: MY ONLY CONCERN WAS THE FACT IN A WHETHER OR NOT THE COURT DECIDES TO ADMIT THE TAPE, BUT WE HAVE RENTED ALL THE EQUIPMENT FOR TODAY. THAT WE'RE NOT COMING BACK TILL MONDAY. IT WOULD BE CONSIDERABLE WASTE OF - CONSIDERABLE EXPENSE IF WE'RE NOT ALLOWED TO SHOW IT TODAY OR AT LEAST RULE ON THE ISSUE OF ITS ADMISSIBILITY.

THE COURT: ARE YOU ASKING FOR AN OFFER OF PROOF ON THE TAPE?

[2288] MR. BURNS: YES, YOUR HONOR.

YOUR HONOR, AT THIS POINT I DON'T WANT TO TELL MR. STANSBURY HOW TO CONDUCT HIS CASE.

ALL I'M INDICATING IS I'M GOING TO OBJECT TO THE TAPE ABSENT AN OFFER OF PROOF OF WHICH I'M UNAWARE. IF HE WANTS TO CALL SOMEONE ELSE FIRST, THAT'S FINE BY ME.

DEFENDANT STANSBURY: I HAVE ALREADY SPECIFIED I WISH TO CALL DETECTIVE GRAY FIRST.

THE COURT: WELL, SINCE WE'VE INDICATED WE CAN TAKE ANY OF THIS TESTIMONY OUT OF ORDER, AND SINCE THE TAPE IS A PROBLEM, WE'LL SEE THE TAPE. AND THEN WE'LL TAKE OFFICER GRAY OR WHOM IT IS THAT IS THE NEXT WITNESS.

SINCE THIS IS - WE HAVE BEEN DOING THIS THROUGHOUT THE TESTIMONY OF THE HEARING SO FAR.

NOW, AS TO THE TAPE ITSELF, I BELIEVE MR. BURNS MAY HAVE AN OBJECTION TO THE TAPE. AND HE INDICATED HE WANTED AN OFFER OF PROOF. I DON'T KNOW IF HE STILL REQUIRES AN OFFER OF PROOF.

MR. BURNS: YES, YOUR HONOR.

I WOULD AT THIS POINT IF THE COURT INTENDS TO VIEW IT PRIOR TO TESTIMONY.

THE COURT: MR. STANSBURY GOING TO MAKE THAT OFFER?

DEFENDANT STANSBURY: YOUR HONOR, MR. BURNS HAS PRIOR TO TESTIMONY - I HAVE NOT REQUESTED IT BE SHOWN PRIOR TO TESTIMONY.

MY PURPOSE OF THE TAPE IS FOR THE PURPOSE OF INVESTIGATING OR QUESTIONING MS. MILLER UPON THE STAND.

ASKING IF IT IS A CORRECT COPY OF WHAT SHE [2289] STATED, ET CETERA. FIND OUT WHO HER AUTHORIZED HER TO MAKE SUCH A STATEMENT FOR THE TELEVISION, FIND OUT WHO ELSE NOT

ONLY AUTHORIZED BUT PERHAPS DISCUSSED THE CONVERSATION OR THE CONTENTS TO BE DISCUSSED -

THE COURT: WHAT IS THE STATEMENT IN THE TAPE?

DEFENDANT STANSBURY: I HONESTLY DON'T RECALL, YOUR HONOR AT THIS MOMENT BECAUSE OF THE SIMPLE FACT I HAVE HAD ONE OPPORTUNITY WHICH WAS VERY LIMITED IN WHICH TO VIEW THE TAPE, WHICH WAS ON A SPECIFIC DAY THAT I ALSO HAD TO GO THROUGH OVER 300 PHOTOGRAPHS, AND I BELIEVE IT WAS ESTIMATED BY COUNSEL THAT I COULD PERHAPS DO ALL OF THAT WITHIN THE NEIGHBORHOOD OF 30 MINUTES.

I THINK IT IS RATHER OBVIOUS I HAVE NOT HAD ACCESS TO THAT TAPE SO THAT I COULD VIEW IT OVER AND OVER AND OVER.

MR. DAUGHERTY: THE COURT MAY RECALL -

THE COURT: IF YOU DON'T KNOW WHAT'S ON THE TAPE IT'S DIFFICULT TO KNOW WHETHER IT'S RELEVANT OR NOT OR WHETHER YOU WOULD EVEN WANT TO -

DEFENDANT STANSBURY: I KNOW THE BASIC CONTENTS. I CANNOT SAY THE EXACT WORDS. I DO NOT RECALL THE EXACT WORDS.

MR. DAUGHERTY: THE COURT MAY RECALL AT MR. STANSBURY'S REQUEST WE HAD

BROUGHT THE TAPE IN AND RENTED THE EQUIPMENT ONE AFTERNOON HERE SO THAT HE CAN REVIEW IT.

THE COURT: I DO RECALL THAT, YES.

MR. DAUGHERTY: I'VE DONE SO AGAIN.

MY ONLY CONCERN IS THERE IS A COST INVOLVED [2290] OF \$38 A DAY FOR THE RENTAL OF THE EQUIPMENT AND SOMEBODY'S PAYING FOR IT.

THE COURT: WELL, I'M GOING TO - WHAT I'M GOING TO DIRECT IS THAT WE VIEW THAT PORTION OF THE TAPE SO THE EQUIPMENT CAN BE RETURNED AND WE DON'T HAVE THIS RECURRING COST. AND WE'LL DO THAT IMMEDIATELY AFTER THE BREAK.

CAN YOU SET IT UP?

THE COURT: HOW LONG DO YOU THINK THIS PORTION OF THE TAPE IS GOING TO BE?

MR. BENART: FIVE MINUTES.

THE COURT: FIVE MINUTES, ALL RIGHT.

MR. DAUGHERTY: MR. BURNS MAY WANT TO VIEW IT BEFORE HE MAKES HIS OBJECTION.

MR. BURNS: I'M CERTAINLY GOING TO VIEW IT IF THE COURTS GOING TO VIEW IT.

THE COURT: I THOUGHT I WAS GOING TO EXCLUDE YOU AT THAT TIME.

MR. BURNS: THANK YOU, YOUR HONOR.

I APPRECIATE MR. DAUGHERTY'S OFFER.

DEFENDANT STANSBURY: AM I TO UNDERSTAND, YOUR HONOR, THAT UPON THE COURTS VIEWING THE TAPE THE EQUIPMENT WILL THEN BE RETURNED?

THE COURT: IF THERE'S NO REASON -

DEFENDANT STANSBURY: AT WHICH TIME I'LL HAVE NO OPPORTUNITY TO SHOW THE TAPE TO MS. MILLER IN THE EVENT I FEEL THAT THERE IS A DESIRE AT THAT TIME OR A NEED TO DO SO AT THAT TIME?

THE COURT: IS MS. MILLER HERE.

[2291] LET'S TAKE MILLER'S TESTIMONY NEXT. WE'LL DO MILLER'S TESTIMONY NEXT.

WE HAVE BEEN TAKING THE MATTERS OUT OF WHATEVER ORDER, IF SHE'S HERE AND - UNLESS THERE'S SOME SHOWING TO ME THAT THERE IS SOME SERIOUS REASON THAT TACTICALLY OR OTHERWISE THAT WOULD IN SOME WAY EFFECT MY RULING ON THIS MOTION IN WHATEVER ORDER WE'RE GOING TO TAKE IT, WE'LL TAKE MS. MILLER NEXT.

I DON'T CARE WHETHER WE TAKE HER TESTIMONY FIRST OR THE TAPE FIRST BUT WE'LL DO THAT THIS AFTERNOON. WE'LL TAKE ABOUT A 10 MINUTES RECESS AND WE'LL COME BACK.

YOU WANT TO SET THAT EQUIPMENT UP, MR. BENART, FINE.

AND AFTER YOU'VE GOT THE EQUIPMENT SET UP, WILL YOU BRING MR. STANSBURY BACK, YOU CAN VIEW THAT PORTION OF THE TAPE, AND BEFORE I HAVE AN OPPORTUNITY TO SEE IT, WE'LL ARGUE AND FIND OUT ON THE BASIS OF THE ARGUMENT WHETHER IT IS RELEVANT OR SOMETHING THAT I SHOULD SEE AND CONSIDER RULING ON THIS MOTION.

THANK YOU.

(RECESS.)

[2292] THE COURT: CONTINUING WITH PEOPLE VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR. BURNS, MR. ROBUSTO, MR. DAUGHERTY, AND MR. STANSBURY ARE PRESENT.

MR. DAUGHERTY: YOUR HONOR, FOR THE RECORD, MR. STANSBURY, MR. ROBUSTO AND MYSELF AND MR. BURNS HAVE ALL HAD AN OPPORTUNITY TO VIEW THE TAPE HERE IN COURT.

THE COURT: ALL RIGHT. I'M PREPARED TO SEE THE TAPE UNLESS YOU WANT TO HEAR SOME ARGUMENT.

MR. DAUGHERTY: WE WOULD SUGGEST THAT THE COURT VIEW THE TAPE SUBJECT TO A MOTION TO STRIKE ON THE GROUND OF RELEVANCE.

IT WOULD BE DIFFICULT FOR THE COURT TO MAKE THAT DETERMINATION I THINK, WITHOUT SEEING THE TAPE.

MR. BURNS: SUBMITTED, YOUR HONOR.

THE COURT: ALL RIGHT. FINE. GRANTED.

WE'LL DO THAT.

THE CLERK: ARE COUNSEL GOING TO WAIVE THE REPORTER RECORDING THE WORDS ON THE TAPE?

THE COURT: MAY WE REFER TO THE TAPE AND RETAIN IT BUT NOT REQUIRE THAT THE REPORTER ATTEMPT TO REPORT WHAT'S ON THE TAPE? WE'VE GOT THE TAPE TO VIEW IT IN ANY EVENT.

DEFENDANT STANSBURY: YES, SIR.

MR. BURNS: SO STIPULATED.

THE COURT: FINE. THANK YOU.

THANK YOU, GENTLEMEN.

(VIEWING THE TAPE.)

MR. DAUGHERTY: THAT, I BELIEVE IS THE RELEVANT [2293] PORTION OF THE TAPE.

THE COURT: IS THAT IT?

DEFENDANT STANSBURY: YES, SIR.

THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. WHAT IS THE DATE?

IT DOES NOT IDENTIFY WHAT THE DATE OF THAT NEWS BROADCAST IS?

MR. BURNS: NO, IT DOES NOT.

MR. DAUGHERTY: NO, IT DOES NOT, FROM A FOUNDATIONAL STANDPOINT, AS FAR AS THE DATE IS CONCERNED.

THE COURT: YES. I WOULD GATHER INFERENTIALLY, IF MR. STANSBURY WAS INTERVIEWED LATE IN THE EVENING ON THE 29TH, AND HE WAS BOOKED SOMETIME AROUND 10:30 IN THE MORNING, WE'RE TALKING ABOUT A BROADCAST ON THE 30TH.

MR. BURNS: IT CERTAINLY WAS AFTER THOSE EVENTS.

PERHAPS WILLIE MILLER CAN HELP US LATER.

I HAVE NOT OBJECTED TO A FOUNDATIONAL BASIS AT THIS POINT.

THE COURT HAS VIEWED THE RECORD.

MY OBJECTION TO THE INFORMATION IS NOT LACK OF FOUNDATION AT THIS POINT.

IT'S MERELY ONE OF RELEVANCY. AND I'LL DEVELOP THAT IN QUESTIONING OF HER WHEN AND IF SHE TAKES THE STAND.

THE COURT: FINE. THANK YOU.

FOR THE RECORD, I GUESS THE RECORD SHOULD REFLECT THAT WE HAVE VIEWED A TAPE OF A NEWS BROADCAST.

I'M NOT SURE WHAT CHANNEL IT IS. I BELIEVE [2294] IT'S CHANNEL 4.

DEFENDANT STANSBURY: CHANNEL 2.

MR. DAUGHERTY: CBS.

THE COURT: AND IT WAS APPROXIMATELY A MINUTE TO A MINUTE AND A HALF THAT WE VIEWED THE NEWSCASTER WITH THE REPORTER DISCUSSED THE ARREST OF MR. STANSBURY WITH ONE OF THE OFFICERS, WILLIE MILLER.

BASICALLY, THAT'S THE TAPE, AND WE'LL RETAIN THAT TAPE FOR ANY FURTHER USE.

DO YOU WANT TO OFFER THAT RIGHT AT THIS MOMENT?

DEFENDANT STANSBURY: YES, SIR, I WOULD AT THIS TIME.

MR. BURNS: I THINK THE TAPE SHOULD BE MARKED FOR IDENTIFICATION AT THIS TIME, AND WE'LL DETERMINE WHETHER IT'S EVIDENCE LATER.

THE CLERK: DEFENDANTS C.

THE COURT: IT'S DEFENDANTS C. IT WILL BE SO MARKED.

(MARKED FOR ID: DFT'S C, VIDEOTAPE)

ALL RIGHT. THANK YOU.

NOW, WHERE ARE WE?

DEFENDANT STANSBURY: AT THIS TIME, I WOULD CALL WILLIE MILLER, YOUR HONOR.

THE COURT: ALL RIGHT.

[2295] WILLIE MILLER, +

A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: RAISE YOUR RIGHT HAND, PLEASE.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE STAND.

STATE YOUR NAME FOR THE RECORD, AND SPELL IT.

THE WITNESS: MY NAME IS WILLIE MILLER. W-I-L-L-I-E, M-I-L-L-E-R.

THE COURT: YOU MAY PROCEED, SIR.

DIRECT EXAMINATION +

BY DEFENDANT STANSBURY:

Q. MISS MILLER, MAY I ASK YOUR OCCUPATION?

A. I'M A DEPUTY SHERIFF.

Q. WERE YOU SO EMPLOYED ON OR ABOUT AUGUST THE 28TH OF 1982 - OF SEPTEMBER, 1982 UP UNTIL OCTOBER 5TH OF 1982?

A. YES, I WAS.

Q. DURING THAT PERIOD OF TIME, DID YOU HAVE AN OCCASION TO GIVE AN INTERVIEW WITH THE PRESS?

[2296] A. DURING THAT PERIOD OF TIME, I'VE GIVEN NUMEROUS INTERVIEWS TO THE PRESS, YES.

Q. WHAT WAS YOUR PARTICULAR ASSIGNMENT AT THAT TIME?

A. I WAS ASSIGNED TO THE SHERIFF'S INFORMATION BUREAU, AND I HAVE BEEN SINCE MAY 1981.

Q. COULD YOU GIVE US SOME TYPE OF A DESCRIPTION OF WHAT THAT JOB BASICALLY CONSIST OF?

A. YES. THE SHERIFF'S INFORMATION BUREAU HAS TWO PRIMARY RESPONSIBILITIES. ONE OF WHICH IS TO MAINTAIN A LIAISON WITH THE NEWS MEDIA REGARDING INCIDENTS THAT INVOLVED THE SHERIFF'S DEPARTMENT.

Q. DO YOU NORMALLY JUST GO OUT AND GIVE AN INTERVIEW, OR DOES SOMEONE HAVE TO REQUEST IT, OR DO YOU HAVE TO BE INSTRUCTED TO DO IT, OR HOW IS THAT HANDLED?

MR. BURNS: OBJECTION, YOUR HONOR, ON GROUNDS OF RELEVANCE.

THE COURT: OVERRULED?

THE WITNESS: THE OFFICE IS A 24-HOUR OFFICE SET UP SPECIFICALLY FOR THE PURPOSE OF PROVIDING THE NEWS MEDIA WITH INFORMATION ON CASES THAT THE SHERIFF'S DEPARTMENT IS INVOLVED IN.

THE INFORMATION IS SOLICITED BY THE NEWS MEDIA VIA PHONE CALLS OR REQUESTS FOR STAND UP INTERVIEWS WITH TELEVISION STATIONS.

Q. DURING A REQUEST FOR AN ACTUAL INTERVIEW, DOES THAT HAVE TO BE APPROVED BY ANY OTHER SUPERVISORS OR -

[2297] A. THAT'S THE FUNCTION OF OUR OFFICE. AND WE'RE AUTHORIZED TO MAKE STATEMENTS BASED ON INFORMATION PROVIDED BY THE HANDLING INVESTIGATOR OR SOMEONE DIRECTLY CONNECTED WITH THE CASE.

Q. BUT YOU MUST HAVE INFORMATION DIRECTLY FROM SOMEONE CONNECTED WITH THE CASE?

A. YES.

Q. OR THE -

A. WE RECEIVE OUR INFORMATION FROM SOMEONE DIRECTLY INVOLVED WITH THE CASE.

IT'S CALLED IN TO OUR OFFICE BY EACH FACILITY OR BUREAU OR UNIT THAT'S INVOLVED IN AN INCIDENT THAT MIGHT BE NEWS WORTHY THAT'S OUR -

MR. BURNS: MAY I TAKE THE WITNESS ON VOIR DIRE?

THE COURT: YES, YOU MAY.

VOIR DIRE EXAMINATION +

BY MR. BURNS:

Q. WERE YOU IN ANY WAY CONNECTED WITH THE INVESTIGATION OF THE DISAPPEARANCE OR DEATH OF ROBYN JACKSON?

A. NO, I WAS NOT.

Q. WERE YOU IN ANY WAY PRIOR TO MAKING ANY NEWS RELEASES PROVIDED WITH COPIES OF ANY POLICE REPORTS CONCERNING THAT INVESTIGATION?

A. NO, I WAS NOT.

Q. WERE YOU AT ANY TIME A PARTY TO BY WAY OF ORAL STATEMENTS FROM MR. THOMAS PATTERSON - STRIKE [2298] THAT - LIEUTENANT TOM JOHNSTON ANY WAY A PARTY TO WHAT HIS THINKING WAS DURING THE TIME IN WHICH HE WAS INVESTIGATING THIS CASE?

A. NO, I WAS NOT.

Q. DID YOU AT ANY TIME RECEIVE ANY INFORMATION IN ANY FORM DIRECTLY FROM LIEUTENANT THOMAS JOHNSTON IN THIS CASE?

A. NO, I DID NOT.

Q. DID YOU HAVE ANY CONVERSATION WITH LIEUTENANT THOMAS JOHNSTON UP UNTIL, SAY, A FEW DAYS AGO BEFORE YOU WENT TO COURT?

A. NO, I DID NOT.

Q. ANY STATEMENTS THAT YOU MADE TO THE POLICE, THAT WAS THE SOLE - STRIKE THAT.

ANY STATEMENTS YOU MADE TO THE PRESS, THAT WAS THE SOLE BASIS OF THOSE STATEMENTS?

A. IT WAS BASED ON TELEPHONED INFORMATION THAT WAS RECEIVED IN OUR OFFICE BY A DEPUTY. I DON'T KNOW WHICH DEPUTY.

THAT WAS RECORDED FOR THE PURPOSE THAT EACH DEPUTY IN THE OFFICE WOULD BE FAMILIAR WITH THE STATEMENTS THAT WAS BEING MADE AVAILABLE TO THE PRESS. AND EACH OFFICER IN THAT UNIT HAD THE SAME INFORMATION.

Q. DO YOU KNOW WHO PHONED IN THAT INFORMATION TO YOUR UNIT AT THAT TIME?

A. NO, I DID NOT.

Q. DO YOU KNOW IN ANY WAY WHAT THE SOURCE OF THAT INFORMATION WAS?

A. [2299] A HOMICIDE INVESTIGATOR.

Q. DO YOU KNOW WHO THAT HOMICIDE INVESTIGATOR WAS?

A. NO, I DO NOT.

Q. DO YOU KNOW IF HE WAS INVOLVED IN THIS CASE, OR WHETHER HE WAS A LIAISON OR WHAT HIS PURPOSE WAS?

A. IT WAS AN INVESTIGATOR ASSIGNED TO THIS PARTICULAR CASE.

MR. BURNS: I HAVE NO FURTHER QUESTIONS.

I'D OBJECT TO ANY STATEMENTS FROM THIS WITNESS AT THIS POINT IN TIME AS BEING TOTALLY IRRELEVANT TO THE MIRANDA MOTION.

SHE WAS NOT AT ANY TIME IN CONTACT WITH THE INVESTIGATOR.

IF THE MOTION DEALS WITH WHAT HE WAS THINKING AT THE TIME HE WAS INTERVIEWING MR. STANSBURY, SHE DIDN'T EVEN HAVE A CONVERSATION WITH HIM, NOR DID SHE HAVE ANY INFORMATION THAT WOULD BE RELEVANT TO HIM.

ANY INFORMATION SHE HAS IS BASED UPON A PIECE OF PAPER TRANSCRIBED BY SOMEBODY ELSE.

THE SOURCE OF THAT PAPER IS UNKNOWN AT THIS TIME. IT IS AT LEAST TRIPLE LAYER HEARSAY.

THE COURT: MR. STANSBURY, DO YOU WISH TO RESPOND?

DEFENDANT STANSBURY: YOUR HONOR, I BELIEVE IT IS A LITTLE HARD TO RESPOND ON THAT.

THE COURT: ON WHAT, SIR? I'M SORRY.

DEFENDANT STANSBURY: I'M REFERRING TO WHAT HAS JUST BEEN VIEWED.

[2300] I WOULD SPECIFY IN REBUTTAL OF MR. BURNS THAT IT IS HIGHLY RELATIVE DUE TO THE FACT THAT MISS MILLER DID SPECIFY THAT IT HAD BEEN RECORDED AS TO WHAT DEPUTY WAS INVOLVED.

SHE DID SPECIFY IT WAS A SPECIFIC MEMBER OF THE HOMICIDE INVESTIGATION TEAM WHICH WAS ON THAT CASE.

I CAN ONLY PRESUME THAT NAME WOULD HAVE BEEN RECORDED. I CAN ONLY PRESUME THAT MISS MILLER COULD INFORM US WHERE THOSE RECORDS MAY BE KEPT.

I DID OBSERVE MISS MILLER, UPON STEPPING ONTO THE WITNESS STAND, HAVING SOME TYPE OF A FOLDER WITH NUMEROUS DOCUMENTS THEREIN ALONG WITH AN ATTACHE CASE.

I CAN ONLY ASSUME SHE CAME PREPARED TO OFFER TESTIMONY IN THIS CASE TODAY RELATING TO HER KNOWLEDGE, OR PAPERS WHICH SHE COULD POSSIBLY REFER TO FOR VARIOUS REASONS TO OBTAIN NAMES OR WHATEVER IS NEEDED DURING THIS PERIOD OF TIME.

THE COURT: IF YOU WISH TO INQUIRE OF HER THE SOURCE OF HER INFORMATION AND WHERE SHE GOT IT, I THINK THAT MIGHT BE RELEVANT.

BUT AT THIS POINT, I'M GOING TO LIMIT YOUR EXAMINATION TO THAT.

HOWEVER, I'M JUST INDICATING HOW I VIEW THE EVIDENCE AT THIS POINT.

YOU ASK WHATEVER QUESTIONS YOU'RE GOING TO ASK, AND I'LL RULE ON IT ON A QUESTION BY QUESTION BASIS.

[2301] DIRECT EXAMINATION + (RESUMED)
BY DEFENDANT STANSBURY:

Q. MRS. MILLER, AS I JUST SPECIFIED, I DID VIEW YOU STEPPING ONTO THE STAND WITH NUMEROUS ITEMS.

DID YOU PER CHANCE BRING ANY RECORDS RELATED TO THE INVESTIGATION THAT WE'RE HERE ON TODAY CONCERNING THE STANSBURY CASE?

A. NO, SIR, I DID NOT.

Q. DID YOU BRING ANY LOGS OR DOCUMENTS OF OTHER TYPES RELATING TO THAT MATTER?

A. NO, I DID NOT.

Q. WOULD YOU HAVE ANY IDEA OF WHERE THE NAMES AND DOCUMENTS WHICH YOU STATED WERE RECORDED WOULD BE LOCATED AT?

MR. BURNS: OBJECTION, YOUR HONOR.

THIS IS A FISHING EXPEDITION, ATTEMPTING TO DEVELOP I DON'T KNOW WHAT, BUT NOT RELEVANT TO THE MOTION AT THIS TIME.

THE COURT: OVERRULED.

DO YOU UNDERSTAND THE QUESTION?

THE WITNESS: YES.

THE SOURCE OF THE INFORMATION IS A CODE 20 FORM, WHICH IS USED BY OUR OFFICE.

IT'S AN INTERNAL DOCUMENT, AND AT THE SHERIFF'S INFORMATION BUREAU.

Q. SO LEGALISTICALLY SPEAKING, THERE PROBABLY WOULD NOT BE ANY PROBLEM IN GETTING THAT PARTICULAR INFORMATION?

[2302] A. AND YOUR OBTAINING IT, SIR?

Q. MA'AM?

A. I DON'T UNDERSTAND YOUR QUESTION.

Q. WOULD THERE BE ANY PROBLEM TO YOUR KNOWLEDGE OF, AS AN EXAMPLE, ONE OF THE INVESTIGATORS IN THIS CASE OBTAINING THAT INFORMATION?

MR. BURNS: OBJECTION, YOUR HONOR. PERHAPS BEYOND THE SCOPE OF THIS WITNESSES' KNOWLEDGE AND IRRELEVANT ANYWAY.

THE COURT: IT MAY NOT BE BEYOND THE SCOPE OF WHAT SHE CAN ANSWER.

I'M GOING TO OVERRULE IT?

THE WITNESS: I DON'T KNOW IF IT WOULD BE A PROBLEM.

IT'S AN INTERNAL DOCUMENT THAT'S SOLELY USED BY OUR OFFICE.

THE COURT: OKAY.

BY DEFENDANT STANSBURY:

Q. DO YOU HAVE ANY PERSONAL FILES THAT YOU YOURSELF KEEP REGARDING WHO INFORMS YOU OF VARIOUS INFORMATION THAT YOU RELATED TO THE PRESS?

A. ONLY THE CODE 20 INFORMATION THAT WE RECORD IN OUR OFFICE.

I HAVE NO PERSONAL FILES.

I HAVE NO NEED FOR THEM.

Q. THERE'S NEVER ANY NEED TO BE ABLE TO RECALL THE PARTICULAR NAME OF AN INVESTIGATOR THAT CONTACTS YOU OR RELAYS INFORMATION TO YOUR OFFICE?

[2303] A. NO. WE CAN SIMPLY REFER TO THE FORM, THE DATE AND THE TIME OF AN INCIDENT AND CALL WHATEVER AGENCY, WHICHEVER OF OUR BUREAU IS INVOLVED, AND ASK FOR THE INVESTIGATOR.

WE DON'T HAVE TO HAVE HIS ACTUAL NAME.

NORMALLY WE CAN REFER TO A CASE BY VICTIM OR SUSPECT IN THE HOMICIDE CASE AND CALL UP AND ASK WHO IS THE INVESTIGATOR HANDLING THAT PARTICULAR CASE.

Q. DID YOU ACCEPT THIS CALL YOURSELF FROM THE INVESTIGATOR ON THAT CASE?

A. NO, I DID NOT, SIR.

Q. DO YOU KNOW WHO DID?

A. NO, I DO NOT.

Q. ARE RECORDS NORMALLY KEPT ON SUCH ITEMS AS THAT AS TO WHO ACCEPTS SUCH CALLS?

A. NO. EVERY DEPUTY IN THE OFFICE HAS A RESPONSIBILITY THAT IF CODE 20 INFORMATION OR

PRESS INFORMATION IS CALLED IN TO THE OFFICE, TO RECORD THAT INFORMATION FOR THE USE OF ALL OTHER DEPUTIES IN THE OFFICE.

AND THERE'S NEVER A NEED TO IDENTIFY THE SOURCE THAT IS TAKING DOWN THE INFORMATION.

IT'S EITHER TYPED OR HANDWRITTEN. AND EVERY DEPUTY IN THE OFFICE MAKES USE OF IT.

Q. SO THEREFORE, THAT LEAVES NO WAY OF BACKTRACKING AS TO WHO TOOK THE INFORMATION.

MR. BURNS: OBJECTION. ARGUMENTATIVE.

I'LL WITHDRAW.

[2304] THE WITNESS: NO.

BY DEFENDANT STANSBURY:

Q. UPON YOUR GIVING AN INTERVIEW TO THE NEWS MEDIA, DO YOU, OR DOES ANYONE IN YOUR OFFICE PREPARE ANY TYPE OF REFERENCE NOTES OR SCRIPT OR ANYTHING OF THAT NATURE?

A. THAT'S WHAT A CODE FORM IS.

Q. AND YOU SIMPLY REVIEW IT CLOSELY AND ALLOW THE INTERVIEW?

A. THAT IS CORRECT.

Q. DO YOU RECALL THIS PARTICULAR INTERVIEW REGARDING THE ROBYN JACKSON CASE?

A. I DID A NUMBER OF INTERVIEWS THAT PARTICULAR DAY VIA TELEPHONE. AND PERHAPS I DID

A TELEVISION INTERVIEW, BUT IT WAS A VERY BUSY DAY.

THERE WAS A LOT OF PRESS INTEREST IN THE STORY, AND I DON'T RECALL ANY PARTICULAR INTERVIEWS.

Q. DO YOU RECALL THE PARTICULAR INFORMATION THAT WAS SPECIFICALLY ON THAT - I BELIEVE YOU CALL IT A CODE 20 FORM?

A. NOT IN DETAIL, NO.

Q. CAN YOU RELATE TO US WHAT INFORMATION YOU DO RECALL FROM THAT FORM?

A. I RECALL THAT WE WERE INFORMED THAT ROBERT STANSBURY HAD BEEN ARRESTED AND CHARGED WITH KIDNAPPING AND MURDER, AND THAT HE HAD BEEN BOOKED AT POMONA POLICE STATION, I BELIEVE. AND THAT AN ICE CREAM TRUCK HAD BEEN IMPOUNDED.

[2305] BUT BASICALLY, THAT'S ALL I REMEMBER. I DON'T KNOW IF IT CONTAINED ANYTHING OTHER THAN THAT INFORMATION.

Q. IF YOU WERE TO PERHAPS VIEW THAT INTERVIEW WITH THE NEWS MEDIA, WOULD THAT PERHAPS POSSIBLY JOG YOUR MEMORY?

A. I'M SURE IT WOULD.

DEFENDANT STANSBURY: AT THIS TIME, YOUR HONOR, I WOULD MOVE TO ALLOW THE WITNESS TO VIEW THE INTERVIEW IN QUESTION.

THE COURT: THAT'S FINE.

MR. BURNS: YOUR HONOR, AT THIS POINT I'LL OBJECT FOR THE SIMPLE REASON THAT WHATEVER MR. STANSBURY IS DOING AT THIS TIME HAS NOT DEALT WITH THE ISSUE THAT THIS WITNESS HAS NOT HAD IN ANY POINT IN TIME ANY CONTACT WITH THE INVESTIGATOR, MR. JOHNSTON IN THIS CASE, WHO WAS THE SOLE PERSON CONDUCTING THE INTERVIEW WITH THE DEFENDANT AND WHOSE STATE OF MIND IS THE SOLE ISSUE BEFORE THIS COURT TO DECIDE.

REGARDLESS OF WHAT A 20 FORM IS, WHAT SHE SAID, THAT WHETHER IT JOGS HER MEMORY TO, WE HAVEN'T GOT BY THE BASIC ISSUE THIS IS ALL TRIPLE, AT LEAST DOUBLE, PERHAPS TRIPLE HEARSAY TO THE ISSUES AT HAND.

THE COURT: WHAT INFORMATION ARE YOU ATTEMPTING TO GET FROM THIS, MR. STANSBURY?

DEFENDANT STANSBURY: I'M ATTEMPTING TO FIND OUT WHERE THE INFORMATION CAME FROM, YOUR HONOR.

THE COURT: YOU MEAN WHICH DETECTIVE TOLD HER ABOUT [2306] THE - WHICH INVESTIGATOR TOLD HER ABOUT THE FACTS THAT SHE WAS INTERVIEWED?

DEFENDANT STANSBURY: NO, SIR.

AT THIS POINT, YOUR HONOR, I'M ATTEMPTING TO PRESUME THAT SOMEONE IN THE SHERIFF'S DEPARTMENT IS NOT LYING OR FALSIFYING RECORDS IN ANY WAY.

AND IF THEY ARE NOT, THEN I COULD ONLY PRESUME THAT THE CODE 20 FORM WOULD BE ACCURATE.

AND I AM ATTEMPTING TO FIND OUT WHAT INFORMATION WAS CONTAINED WITHIN THAT DOCUMENT.

THE COURT: ALL RIGHT, WHAT IS IT THAT YOU HOPE THAT THIS FILM WILL DO IN TERMS OF JOGGING HER MEMORY?

DEFENDANT STANSBURY: PERHAPS ALLOW HER TO RECALL MORE OF THE INFORMATION THAT WAS CONTAINED IN THAT DOCUMENT WHICH SHE USED TO FORM HER INTERVIEW WITH THE NEWS MEDIA ON.

THE COURT: WHY DON'T YOU SUBPOENA THE DOCUMENT.

MR. BURNS: YOUR HONOR, I DON'T KNOW THAT THERE HAS BEEN ANY - ESTABLISHED ANY RELEVANCE TO THE DOCUMENT ITSELF.

THE COURT: I UNDERSTAND THAT.

IF IT'S AVAILABLE AND IT EXISTS, IT MAY BE A DOCUMENT THAT HE CAN GET AHOLD OF AND TAKE A LOOK AT. AND IT MAY EVEN IDENTIFY WHERE THE INFORMATION CAME FROM.

DEFENDANT STANSBURY: I HAVE NO OBJECTION TO THAT, YOUR HONOR, EXCEPT FOR THE AMOUNT OF TIME THAT IT WOULD TAKE IN RELATION TO THIS PARTICULAR HEARING.

MR. BURNS: YOUR HONOR, MAY I HAVE A MOMENT WITH [2307] THE WITNESS?

THE COURT: YES.

(COUNSEL AND WITNESS CONFER IN SOTTO VOCE.)

MR. BURNS: MAY I ASK THE WITNESS TWO QUESTIONS?

THE COURT: YES.

MR. BURNS: WILLIE, AT SOMETIME IN THE MORNING, DID YOU CALL DOWN TO YOUR DEPARTMENT AND ASK IF SOMEONE HAD THE 20 FORM AVAILABLE?

THE WITNESS: YES.

MR. BURNS: DID THEY READ THAT 20 FORM TO YOU?

THE WITNESS: YES.

MR. BURNS: DID YOU TAKE NOTES OR COPY DOWN WHAT THAT 20 FORM SAID?

THE WITNESS: HANDWRITTEN NOTES, YES.

MR. BURNS: DO YOU HAVE THOSE WITH YOU HERE TODAY?

THE WITNESS: YES.

MR. BURNS: I HAVE NO OBJECTION TO THEM RECEIVING THOSE NOTES AT THIS TIME OR READING WHAT IS ON THE 20 FORM FOR WHATEVER RELEVANCE IT HAS.

THE COURT: DO YOU WANT TO SEE THE NOTES?

DEFENDANT STANSBURY: YES, SIR, I WOULD LIKE TO.

I THOUGHT THAT I HAD ASKED EARLIER IF SHE HAD ANY DOCUMENTS RELATING TO THAT INTERVIEW IN ANY WAY.

THE COURT: YOU SEE, THAT WASN'T WHAT I UNDERSTOOD OF THE QUESTION.

DEFENDANT STANSBURY: I WAS SIMPLY STATING THAT I THOUGHT I HAD.

THE COURT: YOU THOUGHT WRONG, I BELIEVE.

[2308] YOU ARE ENTITLED TO SEE THOSE NOTES IF YOU WOULD LIKE TO SEE THEM.

ARE THERE NOTES ONE PERSON CAN EASILY READ?

I THINK IT WOULD BE JUST AS EASY TO READ INTO THE RECORD AS TO WHAT IT SAID.

THE WITNESS: "THE TIME OF THE CALL WAS 0130 HOURS, 9-30-82." AND BESIDES THE DATE AND THE TIME IS THE WORD "UPDATE" MEANING THAT THE HOMICIDE INVESTIGATOR HAS UPDATED AN INITIAL ADVISORY THAT WE OFFERED TO THE PRESS WHICH IN ESSENCE STATES THAT SHERIFF'S HOMICIDE INVESTIGATORS WERE ASSISTING BALDWIN PARK IN A MURDER INVESTIGATION. AND THAT'S ALL THAT THAT SAYS.

THE UPDATE INFORMATION SAYS THAT "SHERIFF'S HOMICIDE INVESTIGATORS ARRESTED ROBERT STANSBURY, MALE WHITE, 39, OF POMONA FOR THE MURDER OF ROBYN L. JACKSON, FEMALE WHITE, 10, AT HIS RESIDENCE."

"STANSBURY RENTED AND OPERATED AN ICE CREAM TRUCK IN BALDWIN PARK. CAME TO THE ATTENTION OF HOMICIDE DETECTIVES AFTER OTHER CHILDREN IN THE NEIGHBORHOOD WERE QUESTIONED."

"STANSBURY'S BEHAVIOR WITH CHILDREN HE SOLD ICE CREAM TO WAS NOT ALWAYS APPROPRIATE IT WAS LEARNED."

"AT THE TIME OF ARREST, DETECTIVES IMPOUNDED HIS TRUCK BELIEVING IT WAS THE ONE USED TO TRANSPORT THE YOUNG VICTIM."

"STANSBURY WAS BOOKED AT POMONA POLICE FOR KIDNAPPING AND MURDER." [2309] THERE WAS AN UPDATE AT 7 O'CLOCK IN THE MORNING ON THE DATE OF 10-4-82, THAT SAID "A COMPLAINT TO BE FILED POMONA DISTRICT ATTORNEY'S OFFICE ON 10-4 AND ARRAIGNMENT AT CITRUS COURT."

THERE WAS AN UPDATE AT 1445 HOURS ON 10-4 MADE BY LIEUTENANT VANCE, "CHARGES OF MURDER, KIDNAPPING, RAPE AND SEX CRIMES AGAINST CHILDREN HAD BEEN FILED WITH THE DA'S OFFICE AGAINST ROBERT STANSBURY."

"HE WILL BE ARRAIGNED ON MONDAY."

BY DEFENDANT STANSBURY:

Q. RELATING TO THE STATEMENT THAT YOU JUST MADE OR READING FROM THAT PAPER CONCERNING THE INVESTIGATION HAVING LED DIRECTLY TO ROBERT STANSBURY.

MR. BURNS: OBJECTION, YOUR HONOR.

THERE'S NOTHING IN THAT PAPER THAT CONTAINS THOSE WORDS. THE QUESTION IS INACCURATE.

THE COURT: SUSTAINED.

DEFENDANT STANSBURY: MAY I SEE YOUR NOTES, MISS MILLER?

THE WITNESS: CERTAINLY.

DEFENDANT STANSBURY: I THINK IT MIGHT -

THE COURT: WOULD YOU LIKE IT READ BACK?

DEFENDANT STANSBURY: I THINK IT MIGHT BE EASIER IF I READ IT.

Q. MISS MILLER, WERE YOU ACQUAINTED WITH THE INDIVIDUAL YOU WERE SPEAKING WITH ON THE PHONE?

MR. BURNS: OBJECTION, YOUR HONOR. THERE IS NO INDICATION THAT SHE SPOKE TO THE PERSON. IN FACT HER [2310] TESTIMONY WAS -

THE COURT: I DON'T KNOW WHETHER SHE'S TALKING ABOUT THE PERSON SHE TALKED TO THIS MORNING OR IN 1982.

YOU'LL HAVE TO MAKE THE QUESTION MORE CLEARER.

BY DEFENDANT STANSBURY:

Q. I'M REFERRING TO THE CONVERSATION YOU ALLEGED TO HAVE HAD THIS MORNING, MISS MILLER.

A. YES, I'M FAMILIAR WITH IT.

Q. ARE YOU FAMILIAR WITH THE PERSON YOU WERE SPEAKING TO? DID YOU RECOGNIZE WHO THAT PERSON WAS BY THEIR VOICE?

A. YES. IT WAS THE SECRETARY ASSIGNED TO THE SHERIFF'S INFORMATION BUREAU.

Q. DO YOU KNOW IF THEY WERE READING DIRECTLY FROM THE INFORMATION THAT WAS THERE, OR WERE THEY JUST GIVING YOU A GENERAL CONTEXT, OR DO YOU KNOW?

A. THE SECRETARY READ THE INFORMATION TO ME FROM WHICH I TOOK NOTES.

SHE READ THEM SLOWLY SO THAT I - THERE ARE SOME ABBREVIATIONS THERE. BUT I TOOK NOTES VERBATIM AS SHE READ THE INFORMATION TO ME.

Q. IT WAS VERBATIM THEN?

A. YES, IT WAS.

Q. I BELIEVE THIS FIRST PORTION WHICH COVERS MAYBE ONE INCH OR HALF AT THE TOP PORTION OF THE PAGE, WAS ALL TAKEN DURING THE

SAME PERIOD OF TIME WHICH IS MARKED UP HERE AS ON 1:30, 9-30-82?

[2311] A. YES.

Q. ALL OF THIS INFORMATION CAME IN AT THIS TIME?

A. YES.

Q. THEREFORE, YOU RECEIVED THE INFORMATION WHICH IS ON THAT FORM THAT THE ICE CREAM TRUCK HAD BEEN IMPOUNDED - YOU RECEIVED THE INFORMATION AT 1:30 OF THAT MORNING THAT THE ICE CREAM TRUCK HAD ALREADY BEEN IMPOUNDED?

MR. BURNS: OBJECTION, YOUR HONOR.

THIS WITNESS DID NOT INDICATE THAT SHE RECEIVED THE INFORMATION.

ALL SHE OBTAINED IS WHAT IS ON THE CARD. HER INDICATION SHE IS NOT THE PERSON THAT RECEIVED THE PHONE CALL THAT CAUSED THAT CARD TO BE DUPLICATED.

DEFENDANT STANSBURY: LEARNED COUNSEL IS CORRECT.

I'LL WITHDRAW THE QUESTION AND REPHRASE IT.

Q. DID YOU RECEIVE THE INFORMATION TODAY FROM THE SECRETARY FROM THAT FORM CODE 20 THAT THE ICE CREAM TRUCK HAD BEEN IMPOUNDED DURING THAT PERIOD OF TIME BEFORE THE CODE 20 FORM WAS FILED?

MR. BURNS: OBJECTION, YOUR HONOR.

THE WITNESS HAS TESTIFIED THAT SHE TOOK VERBATIM WHAT INFORMATION IS ON THE FORM AS READ TO HER.

THAT'S THE EXTENT OF HER KNOWLEDGE AT THIS POINT IN TIME.

I DON'T UNDERSTAND WHAT HIS QUESTION IS. THE CARD ITSELF OR THIS INFORMATION FROM THE CARD SPEAKS FOR ITSELF AS TO WHEN IT WAS RECEIVED.

[2312] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. IS THE INFORMATION ON THE CODE 20 FORMS NORMALLY ALWAYS CORRECT?

MR. BURNS: OBJECTION, YOUR HONOR, IRRELEVANT AND BEYOND THE SCOPE OF THIS WITNESS.

OBVIOUSLY SHE MAY SEEK TO BE ACCURATE. OTHER THAN THAT WHETHER IT'S ULTIMATELY ACCURATE PARTICULARLY IF SHE HASN'T CONDUCTED SOME STUDY.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DO YOU RECALL WHEN YOU READ THIS PARTICULAR FORM 20 YOURSELF?

A. THE FIRST TIME I SAW IT, NO. I DON'T RECALL. THERE ARE A NUMBER OF CODE 20'S GENERATED EACH DAY. SO I CAN'T SAY AT WHAT PARTICULAR DAY OR TIME I FIRST SAW THE INFORMATION.

Q. BUT YOU DID READ IT PRIOR TO GIVING AN INTERVIEW?

A. YES, I DID.

Q. WAS THAT INTERVIEW BASED UPON THE CODE 20 FORM?

A. YES, IT WAS.

Q. AND IN ACCORDANCE WITH THE INFORMATION YOU HAVE RECEIVED THIS MORNING, ALL OF THE INFORMATION FROM HERE DOWN TO HERE, ALLOWING THE RECORD TO REFLECT I'M POINTING TO THE TOP OF THE PAGE DOWN TO APPROXIMATELY THE MIDDLE OF THE PAGE, WAS ALLEGEDLY GIVEN TO SOMEONE WITHIN [2313] YOUR OFFICE AT 1:30 A.M. ON SEPTEMBER THE 30TH OF 1982?

A. YES

DEFENDANT STANSBURY: YOUR HONOR, I BELIEVE THE PARTICULAR INFORMATION INVOLVED WITHIN THIS IS ALL THAT IS ON THE TAPE, PERHAPS THE NEWS MEDIA EDITED THE TAPE PRIOR TO RUNNING IT OR SOMETHING, BUT THE COURT HAS VIEWED THE TAPE.

THE COURT: SO WHAT ARE YOU TELLING ME?

DEFENDANT STANSBURY: I DON'T BELIEVE THAT THE REST OF THIS INFORMATION ON FURTHER DOWN CAME IN ON LATER DATES IS ON THE TAPE.

THEREFORE, AT THIS TIME, MS. MILLER HAS SPECIFIED THAT HER INTERVIEW WITH THE NEWS MEDIA WAS BASED UPON THIS INFORMATION WHICH WAS RECEIVED AT 1:30 A.M. OF SEPTEMBER THE 30TH OF 1982, WHICH WAS APPROXIMATELY ONE HOUR AFTER I HAD BEEN ARRESTED AND I WOULD AT THIS TIME MOVE THAT I BE PERMITTED TO ALLOW MS. MILLER TO VIEW THE TAPE FOR THE PURPOSE OF PERHAPS JOGGING HER MEMORY.

THE COURT: AS TO WHAT?

DEFENDANT STANSBURY: AS TO THE ACTUAL WORDS THAT WERE SAID DURING THE COURSE OF HER INTERVIEW.

THE COURT: EXCUSE ME.

ARE YOU TALKING ABOUT THE COURSE OF THE INTERVIEW WITH THE REPORTER OR THE COURSE OF THE INTERVIEW WITH SOMEBODY FROM WHOM SHE RECEIVED THAT INFORMATION ON SEPTEMBER 28TH?

DEFENDANT STANSBURY: WITH THE INTERVIEW OF THE REPORTERS, YOUR HONOR, TO SEE IF THAT STATEMENT AT THAT [2314] POINT WAS ACCURATE IN HER MIND FROM WHAT SHE HAD READ FROM THE REPORTS AND THINGS OF THAT NATURE, YES.

MR. BURNS: YOUR HONOR, I'LL OBJECT.

THE COURT: I'M SORRY.

I DON'T UNDERSTAND WHAT YOU'RE ASKING, MR. STANSBURY. I DON'T UNDERSTAND WHY YOU WANT HER TO SEE THE TAPE.

MR. DAUGHERTY: MAY I HAVE JUST A MOMENT, YOUR HONOR?

THE COURT: YES.

BY DEFENDANT STANSBURY:

Q. MS. MILLER, DO YOU RECALL SPECIFICALLY MAKING THE STATEMENT THAT THE INVESTIGATION OF THE OFFICERS WITHIN THE NEIGHBORHOOD LED - OF BALDWIN PARK WHERE I BELIEVE ROBYN JACKSON WAS SUPPOSED TO HAVE BEEN ALLEGEDLY ABDUCTED FROM, THAT QUESTIONING OF OTHER CHILDREN IN THE AREA HAD LED DIRECTLY TO MYSELF?

A. NO, I DON'T RECALL MAKING THAT STATEMENT.

ANY STATEMENT I MADE WOULD HAVE BEEN ABLE REFERRING TO THE INFORMATION THAT'S ON THE CODE 20 FORM.

Q. I DON'T SEE ANY SPECIFIC INFORMATION -

MR. BURNS: OBJECTION, YOUR HONOR, ARGUMENTATIVE IF IT'S A QUESTION.

THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. DO YOU RECALL SAYING ANYTHING ABOUT THE INVESTIGATION LEADING DIRECTLY TO ROBERT STANSBURY?

A. I DON'T RECALL, SIR.

[2315] Q. WOULD IT PERHAPS JOG YOUR MEMORY IF YOU WERE TO BE ABLE TO VIEW SUCH AN INTERVIEW?

A. PERHAPS, SIR.

DEFENDANT STANSBURY: AT THIS TIME, YOUR HONOR, MAY I REFRESH THE WITNESS' MEMORY WITH THE VIDEOTAPE IN QUESTION?

THE COURT: WHAT IS IT YOU'RE TRYING TO REFRESH.

LET'S ASSUME, THE VIDEO TAPE, AND I DON'T RECALL. LET'S ASSUME THE VIDEOTAPE SAYS THAT THESE FACTS LED DIRECTLY TO ROBERT STANSBURY.

SHE'S INDICATED THAT THE ONLY INFORMATION SHE HAD IS WHAT YOU HAVE IN FRONT OF YOU. SHE MAY HAVE CHARACTERIZED THAT EVIDENCE AS DIRECTED TO, BUT -

DEFENDANT STANSBURY: THAT IS WHAT I'M ATTEMPTING TO FIND OUT, YOUR HONOR.

AT THE SAME TIME AS I BELIEVE MR. BURNS HAS POINTED OUT, WHEN MS. MILLER READ THIS, THOSE WORDS WERE NOT IN THERE.

THE COURT: I DON'T BELIEVE THEY ARE.

MR. BURNS: THAT'S RIGHT, YOUR HONOR. IT'S IRRELEVANT BECAUSE THEY WEREN'T.

DEFENDANT STANSBURY: AND WHAT IS RELEVANT IS THE FACT, IF THEY WEREN'T, HOW DID -

THE COURT: IN THE INTEREST OF TIME, I'M GOING TO ALLOW HER TO VIEW THE TAPE. I THINK THAT TAKES A MINUTE AND A HALF, I BELIEVE I'LL SAVE 20 MINUTES OF ARGUMENT BY ALLOWING HER TO LOOK AT THE TAPE.

MR. BENART, COME OVER AND TURN THE TAPE ON.

[2316] THE CLERK: UNFORTUNATELY, YOUR HONOR, I THINK IT WAS REWOUND.

THE COURT: I'M GOING TO DIRECT THAT MS. MILLER TAKE A SEAT CLOSE TO THE TAPE OF THE TV MACHINE SO SHE CAN VIEW THE TAPE AND WE'LL CONTINUE WITH THE EXAMINATION.

LET'S GO OFF THE RECORD WHILE HE'S DOING THAT.

(THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

(VIDEOTAPE PLAYED.)

THE COURT: ALL RIGHT.

THE RECORD SHOULD REFLECT THAT THE WITNESS HAS HAD AN OPPORTUNITY TO VIEW THE TAPE OF THAT TELEVISION BROADCAST CAST FOR

THE PURPOSE OF THE NEXT QUESTION. THE WITNESS DID USE THE WORD ON THE TAPE, THAT THE INFORMATION DEVELOPED WHILE THE OFFICERS INVESTIGATED LED DIRECTLY TO ROBERT STANSBURY.

MR. STANSBURY IF YOU HAVE OTHER QUESTIONS YOU WISH TO ASK?

BY DEFENDANT STANSBURY:

Q. I PRESUME YOU DO RECALL THAT INTERVIEW AT THIS TIME?

A. YES, I DO.

Q. SINCE THOSE WORDS WERE NOT CONTAINED WITHIN THE NOTES YOU HAVE OFFERED HERE, HAS IT PERHAPS REFRESHED YOUR MEMORY AS TO WHERE YOU OBTAINED ACCESS TO THOSE WORDS OR ANYTHING?

A. OBVIOUSLY MY INTERPRETATION OF WHAT I READ THERE.

[2317] Q. MA'AM?

A. MY INTERPRETATION OF WHAT I READ ON THE CODE 20 FORM.

Q. COULD YOU PERHAPS REREAD YOUR NOTES HERE CONCERNING THAT PERIOD OF TIME?

A. CERTAINLY.

Q. JUST GO OVER THEM AND REFRESH YOUR MEMORY THERE.

(PAUSE.)

Q. DO YOU SEE ANY PLACE -

THE COURT: YOU'VE ASKED HER TO READ IT. SO GIVE HER AN OPPORTUNITY.

THE WITNESS: I'VE REVIEWED IT.

THE COURT: FINE. THANK YOU

YOU MAY PROCEED, MR. STANSBURY.

BY DEFENDANT STANSBURY:

Q. DO YOU SEE ANYTHING THERE THAT SAYS THAT THE INVESTIGATION LED DIRECTLY TO ME AT THAT TIME?

A. NO.

IT'S NOT INCLUDED IN THIS INFORMATION.

Q. IT'S NOT.

IS THE INFORMATION INCLUDED IN THERE THAT THE - AFTER SPEAKING WITH CHILDREN IN THE AREA, THAT THE INVESTIGATION HAD LED DIRECTLY TO ME?

A. NO.

IT SAYS THAT -

MR. BURNS: OBJECTION, YOUR HONOR. SHE'S ANSWERED THE QUESTION.

[2318] THE COURT: SUSTAINED.

BY DEFENDANT STANSBURY:

Q. I BELIEVE THAT YOU WERE ABOUT TO MAKE A COMMENT THAT SAID SOMETHING ELSE.

COULD YOU PLEASE TELL US WHAT YOU WERE ABOUT TO SAY?

MR. BURNS: OBJECTION, YOUR HONOR.

THE COURT: OVERRULED.

YOU MAY ANSWER THAT.

THE WITNESS: THE CODE 20 FORM SAYS THAT "STANSBURY OPERATED -" "RENTED AND OPERATED AN ICE CREAM TRUCK IN BALDWIN PARK, CAME TO THE ATTENTION OF HOMICIDE DETECTIVES AFTER OTHER CHILDREN IN THE NEIGHBORHOOD WERE QUESTIONED."

Q. SO IT DOES SAY AFTER CHILDREN IN THE NEIGHBORHOOD WERE QUESTIONED?

A. YES.

Q. WAS THAT IN THE REPORT DATED FOR 1:30 SEPTEMBER 29TH OF 1982?

A. SEPTEMBER 30TH, 1982.

Q. THANK YOU.

AND YOU JUST ASSUMED THAT THAT HAD CAUSED THE INVESTIGATION TO LEAD DIRECTLY TO ME?

A. THAT WAS MY INTERPRETATION.

Q. BUT YOU HAD HAD NO CONVERSATIONS WITH ANY OF THE OFFICERS THAT YOU RECALL?

A. NO, I DID NOT.

DEFENDANT STANSBURY: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

[2319] MR. BURNS: NO QUESTIONS.

THE COURT: THANK YOU, OFFICER. YOU MAY STEP DOWN. YOU ARE FREE TO GO.

THE WITNESS: THANK YOU.

THE COURT: GENTLEMEN, WHAT NEXT?

THE CLERK: EXCUSE ME, JUST A MOMENT, YOUR HONOR.

MR. BURNS: YOUR HONOR, MAY I HAVE A FEW MOMENTS?

THE COURT: YES.

(TELEPHONE INTERRUPTION.)

MR. BURNS: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT, MR. STANSBURY?

DEFENDANT STANSBURY: ONE MOMENT, YOUR HONOR.

YOUR HONOR, AT THIS TIME I WOULD PREFER IN ORDER, IN AN EFFORT TO SPEED THINGS UP A LITTLE BIT PERHAPS, TO ALLOW MR. ROBUSTO TO EXAMINE THE NEXT WITNESS AFTER THE CURRENT DIAGRAMS ARE REMOVED FROM THE BOARD, PLEASE.

THE COURT: MR. ROBUSTO, WOULD YOU BE - TOM, WOULD YOU FOLD THOSE OVER, PLEASE.

AND THE NEXT WITNESS IS GOING TO BE WHO, PLEASE?

DEFENDANT STANSBURY: OFFICER GRAY.

MR. DAUGHERTY: CATHY GRAY.

THE COURT: I ASSUME THIS IS GOING TO BE PRETTY SHORT.

MR. DAUGHERTY: I THINK HE'S AFRAID TO HAVE ME DO IT.

(THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

[2320] THE COURT: WE'RE BACK ON THE RECORD.

WOULD YOU RISE TO BE SWORN, PLEASE.

CATHY GRAY, +
A DEFENSE WITNESS, HAVING BEEN FIRST DULY SWORN, TESTIFIES AS FOLLOWS:

THE CLERK: PLEASE, RAISE YOUR RIGHT HAND.

YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT, SHALL BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESS STAND AND STATE YOUR NAME FOR THE RECORD AND SPELL YOUR FIRST AND LAST NAMES.

THE WITNESS: CATHY GRAY, C-A-T-H-Y, G-R-A-Y.

DIRECT EXAMINATION +

BY MR. ROBUSTO:

Q. OFFICER GRAY, BY WHOM ARE YOU EMPLOYED AT THE PRESENT TIME?

A. CITY OF BALDWIN PARK.

Q. IN WHAT CAPACITY?

A. AS A RESERVE OFFICER AND A DISPATCHER.

Q. AND WERE YOU SO EMPLOYED ON SEPTEMBER 29, 1982?

A. YES, I WAS.

[2321] Q. ON THAT PARTICULAR DATE, DID YOU HAVE AN OPPORTUNITY TO ARRIVE IN THE POMONA AREA?

A. YES.

Q. AND WITH WHOM?

A. SERGEANT HIGGENBOTHAM.

Q. ANYBODY ELSE?

A. LEE AND MULCAHY.

Q. WHAT WAS YOUR PURPOSE?

A. TO GO LOOK FOR AN ADDRESS.

Q. WHAT KIND OF AN ADDRESS WERE YOU LOOKING FOR?

A. A TRAILER PARK ON MISSION.

Q. AND YOU WERE LOOKING FOR AN ADDRESS FOR SOMEBODY?

A. UH-HUH.

Q. AND WHO WAS THAT FOR?

A. PARDON ME?

Q. FOR WHOM?

A. FOR WHOM WAS I LOOKING FOR THE ADDRESS FOR?

Q. YES.

A. ONE OF THE HOMICIDE INVESTIGATORS.

Q. DO YOU KNOW THAT INVESTIGATOR'S NAME?

A. HIS FIRST NAME IS THOMAS. I DON'T RECALL HIS LAST NAME.

Q. WOULD THAT BE INVESTIGATOR JOHNSTON?

A. YES.

Q. AND YOU WERE LOOKING FOR A PARTICULAR PERSON AT THAT TIME?

A. YES.

[2322] Q. AND DO YOU KNOW THE NAME OF THAT PERSON?

A. MR. STANSBURY.

Q. DID YOU HAVE ANY INFORMATION ABOUT MR. STANSBURY AT THE TIME THAT YOU ARRIVED IN POMONA?

A. NO.

Q. HAD YOU HAD A CONVERSATION WITH ANY OF THE INVESTIGATORS INVESTIGATING MR. STANSBURY?

A. NO.

Q. HAD YOU HAD ANY CONVERSATION WITH LIEUTENANT JOHNSTON ABOUT MR. STANSBURY AT ALL?

A. NO.

Q. HAD YOU HAD A CONVERSATION WITH MR. BILL PATTERSON ABOUT MR. STANSBURY?

A. NO.

Q. HAD YOU HAD AN INVESTIGATION OR HAD YOU HAD A CONVERSATION WITH A CHUCK RIOR-DAN ABOUT MR. STANSBURY?

A. NO.

Q. DID YOU HAVE ANY INFORMATION ABOUT MR. STANSBURY AT ALL PRIOR TO GOING TO POMONA?

A. NOT TO MY KNOWLEDGE.

Q. ARE YOU SAYING -

A. I DIDN'T KNOW ANYTHING.

Q. DO YOU KNOW WHAT TIME YOU ARRIVED IN POMONA?

A. AT THE TRAILER PARK?

Q. YES, MA'AM.

A. ABOUT 11.

Q. 11?

A. APPROXIMATELY, 11:00 P.M.

[2323] Q. AND YOU WERE WITH MR. HIGGEN-BOTHAM?

A. YES, I WAS.

Q. AND THERE WAS ANOTHER CAR CARRYING JOE LEE AND MULCAHY?

A. YES.

Q. AND YOU ARRIVED AT THIS PARTICULAR TRAILER PARK?

A. YES.

Q. WHO WAS YOUR SUPERVISOR AT THAT POINT IN TIME?

A. SERGEANT HIGGENBOTHAM.

Q. DID YOU HAVE INSTRUCTIONS FROM HIGGENBOTHAM?

A. AS TO?

Q. AS TO WHAT YOU WERE GOING TO DO WHEN YOU ARRIVED AT THE TRAILER PARK?

A. WE WERE SUPPOSED TO SEE IF A MR. STANSBURY WAS THERE AND ASK HIM TO COME DOWN TO POMONA POLICE DEPARTMENT.

Q. AND DID HE GIVE YOU ANY OTHER INSTRUCTIONS?

A. NO.

Q. NO INSTRUCTIONS?

A. I DON'T KNOW WHAT YOU'RE REFERRING TO.

Q. WELL, PRIOR TO THE ARRIVAL AT THE TRAILER PARK, DID HE GIVE YOU ANY INSTRUCTIONS AT ALL?

A. NO.

Q. WERE YOU DRIVING THE VEHICLE THAT YOU ARRIVED THERE?

A. NO.

[2324] Q. YOU PARKED THE CAR?

A. HE DID.

Q. AND YOU EXITED THE VEHICLE?

A. YES.

Q. WHAT DID YOU DO?

A. WALKED UP TO THE TRAILER. WALKED THROUGH THE TRAILER PARK UP TO THE TRAILER.

Q. DID YOU GO RIGHT UP NEXT TO THE TRAILER?

A. NO.

Q. HOW FAR AWAY FROM THE TRAILER WERE YOU, APPROXIMATELY?

A. ABOUT 10 FEET.

Q. WERE YOU IN UNIFORM?

A. NO, I WAS NOT.

Q. WERE YOU WORKING UNDER COVER THAT DAY?

A. YES, I WAS.

Q. YOU WERE ARMED?

A. YES, I WAS.

Q. WAS YOUR WEAPON OUT OF WHERE YOU KEEP IT?

A. YES.

Q. WAS THAT AT ANYBODY'S INSTRUCTION?

A. NO.

Q. YOU DID THAT ON YOUR OWN?

A. YES.

Q. OKAY.

DID YOU DO THAT AFTER OBSERVING THE OTHER OFFICERS DO THAT?

A. I DON'T RECALL SEEING ANYBODY ELSE DO IT.

[2325] Q. SO YOU DID THAT UPON YOUR OWN THINKING PROCESS?

A. YES.

Q. ALL RIGHT.

DID YOU APPROACH - DID YOU MAKE CONTACT WITH MR. STANSBURY PERSONALLY?

A. NO.

Q. WHO DID THAT?

A. LEE.

Q. MR. LEE WENT TO THE DOOR?

A. YES, HE DID.

Q. AND HIS WEAPON WAS DRAWN ALSO?

A. I DON'T RECALL.

Q. YOU WERE BEHIND LEE?

A. YES.

Q. WAS THERE ANYBODY ELSE IN FRONT OF YOU, ANY OTHER OFFICERS BESIDES LEE?

A. NOBODY WAS ACTUALLY IN FRONT OF ME.

Q. WELL, DID LEE HAVE HIS BACK TO YOU?

A. HE WAS STAND STANDING SIDEWAYS, FACING THE DOOR.

Q. WAS THERE ANY OTHER OFFICERS CLOSER TO THE DOOR BESIDES MR. LEE AND YOU?

A. YES, MULCAHY.

Q. AND WHERE WAS HIGGENBOTHAM?

A. NEXT TO ME.

Q. AND WAS HIS WEAPON DRAWN?

A. HE HAD A WEAPON. BUT I WASN'T PAYING [2326] ATTENTION TO HIM.

Q. WILL YOU APPROACH THE BLANK PIECE OF PAPER THERE AND DRAW A DIAGRAM OF THE TRAILER AND THE LOCATION THAT THE OFFICERS WERE?

A. YOU WANT ME TO WRITE THE NAMES.

Q. FOR THE RECORD IT APPEARS YOU HAVE DRAWN A RECTANGLE TYPE BOX; IS THAT CORRECT?

A. YES.

Q. WOULD YOU LABEL THAT TRAILER, PLEASE. IT APPEARS THAT YOU HAVE DRAWN WHAT I'M GOING TO ASSUME IS A FRONT DOOR?

A. YES.

Q. WOULD YOU LABEL THAT FRONT DOOR, PLEASE.

A. IT ALSO APPEARS THAT YOU HAVE DRAWN FOUR X'S?

A. YES.

Q. WHICH I'M ASSUMING REPRESENTS THE OFFICERS THAT ARRIVED AT THE TRAILER.

IS THAT CORRECT?

A. YES.

Q. WOULD YOU PUT AN H NEXT TO THE X THAT REPRESENTS SERGEANT HIGGENBOTHAM. AND WOULD YOU PUT AN L NEXT TO THE X THAT REPRESENTS JOE LEE. AND WILL YOU PUT AN M NEXT TO THE X THAT REPRESENTS OFFICER MULCAHY.

AND WILL YOU PUT A G THAT REPRESENTS OFFICER GRAY.

AND WILL YOU INDICATE ON THE DIAGRAM WHERE THE CAR THAT YOU ARRIVED IN WAS PARKED PRIOR TO YOUR EXITING SAID VEHICLE.

[2327] DID YOU NOTICE WHERE THE OTHER VEHICLE PARKED?

A. RIGHT IN FRONT. WE WERE BEHIND.

Q. THANK YOU.

YOU MAY BE SEATED. THANK YOU.

COULD YOU HEAR WHAT MR. LEE SAID TO - STRIKE THAT.

MR. LEE MADE CONTACT WITH THE FRONT DOOR.

IS THAT CORRECT?

A. YES, HE DID.

Q. DID SOMEBODY RESPOND TO THE FRONT DOOR?

A. YES.

Q. AND DID YOU HEAR WHAT MR. LEE SAID?

A. I REMEMBER HE IDENTIFIED HIMSELF AS BALDWIN PARK POLICE AND SAID HE'D LIKE TO TALK - ASK FOR MR. STANSBURY, I DON'T REMEMBER THE EXACT WORDING.

BUT ASKED FOR - IF A MR. STANSBURY WAS THERE. HE SAID HE WAS MR. STANSBURY AND

ASKED HIM TO COME DOWN TO POMONA POLICE DEPARTMENT.

BUT I CAN'T REMEMBER THE EXACT CONVERSATION.

Q. DID MR. LEE INDICATE TO MR. STANSBURY WHY HE WAS BEING REQUESTED TO GO TO THE POMONA POLICE DEPARTMENT?

A. I DON'T RECALL.

Q. YOU RECALL ANY OTHER WORDS BEING EXCHANGED BETWEEN MR. STANSBURY AND MR. LEE?

A. I REMEMBER HIM ASKING HIM TO COME DOWN TO POMONA POLICE DEPARTMENT AND HE SAID SURE, OKAY. AND THAT WAS IT.

[2328] Q. WAS THERE ANY WORDS ABOUT MR. STANSBURY HAVING TRANSPORTATION TO THE POMONA FACILITY?

A. I DON'T RECALL.

Q. DO YOU KNOW HOW MR. STANSBURY ARRIVED AT THE POMONA FACILITY?

A. YES. HE ROLLED WITH OFFICER LEE.

Q. HE DROVE WITH OFFICER LEE?

A. HE ROLLED WITH OFFICER LEE.

Q. AND YOU WERE NOT IN THAT CAR?

A. I WAS NOT.

Q. NOW, THIS WAS AT 11:00 P.M. APPROXIMATELY?

A. APPROXIMATELY.

Q. HOW WAS THE LIGHTING AT THE TRAILER AT THE TIME THAT YOU ARRIVED I MEAN, WAS THERE ANY ARTIFICIAL LIGHTING?

A. AT THE TRAILER, I DON'T REMEMBER. BUT WALKING UP TO IT IT WAS DARK.

Q. DID YOU HAVE ANY PROBLEM SEEING MR. STANSBURY WHEN HE CAME TO THE DOOR?

A. NO.

Q. NOTHING WAS BLOCKING YOUR VIEW OF MR. STANSBURY?

A. NO.

Q. PRIOR TO YOUR ARRIVAL AT THIS LOCATION AT APPROXIMATELY 11:00 P.M., DID YOU HAPPEN TO BE AT A DIFFERENT LOCATION IN POMONA?

A. YES.

Q. AND WHAT WAS YOUR REASON FOR BEING THERE?

[2329] A. WENT TO GO LOOK FOR AN ADDRESS AND THAT'S WHERE WE MET HOMICIDE.

Q. OKAY.

YOU APPARENTLY HAD INSTRUCTIONS TO LOOK FOR ANOTHER ADDRESS PRIOR TO LOOKING FOR MR. STANSBURY?

A. WENT TO THE PREVIOUS ADDRESS AND FROM THERE IS WHEN WE WENT TO THE TRAILER PARK IN POMONA.

Q. DID YOU HAVE ANY CONTACT WITH ANY HOMICIDE INVESTIGATORS AT THE PREVIOUS ADDRESS?

A. MYSELF, NO.

Q. OKAY.

DID YOU OBSERVE ANY HOMICIDE INVESTIGATORS AT THE PREVIOUS ADDRESS?

A. YES.

Q. DO YOU KNOW WHAT THE PREVIOUS ADDRESS WAS?

A. NO, I DON'T.

Q. WAS IT DUDLEY IN POMONA, DUDLEY STREET IN THE CITY OF POMONA?

A. I BELIEVE THAT WAS IT, BUT HONESTLY I CAN'T SAY FOR SURE.

Q. YOU WERE WITH SERGEANT HIGGENBOTHAM?

A. YES, I WAS.

Q. WHAT TIME DID YOU COME ON, YOUR SHIFT THIS PARTICULAR DAY?

A. I DON'T RECALL. I BELIEVE IT WAS EITHER FIVE OR SIX.

Q. WOULD THAT BE 5:00 P.M.?

A. YES.

[2330] Q. SO YOU WERE WORKING A NORMAL SHIFT AT THIS POINT IN TIME?

A. I WAS CALLED IN TO WORK.

Q. WERE YOU CALLED IN - WERE YOU INFORMED WHY YOU WERE CALLED IN TO WORK?

A. YES.

Q. AND WHAT REASON?

A. IT WAS TO WORK A STAKE OUT ON A NARCOTICS SURVEILLANCE.

Q. THEN WHEN YOU GOT TO WORK, YOU DID SOMETHING DIFFERENT?

A. YES.

Q. YOU STARTED INVESTIGATING THE MURDER OF ROBYN JACKSON?

MR. BURNS: OBJECTION, YOUR HONOR, AS TO THE TERM INVESTIGATING THE TERM MURDER OF ROBYN JACKSON. I BELIEVE THE WITNESS HAS TESTIFIED AS TO WHAT SHE DID.

THE COURT: OVERRULED.

YOU MAY ANSWER.

THE WITNESS: I CAME IN TO WORK A SPECIAL DETAIL AND WHEN I GOT THERE I WAS ADVISED BY SERGEANT HIGGENBOTHAM I WAS GOING TO BE ASSISTING HIM.

WE WERE GOING TO BE ASSISTING HOMICIDE.

MR. ROBUSTO: OKAY.

BY MR. ROBUSTO:

Q. DID MR. HIGGENBOTHAM TELL BUT ABOUT A MURDER THAT HAD TAKEN PLACE?

A. I WAS TOLD THAT WE HAD A MISSING JUVENILE [2331] THAT TURNED INTO A 187.

Q. SO YOU WERE ASSISTING HOMICIDE AT THAT POINT IN TIME?

A. YES.

Q. YOUR FIRST ACT IN ASSISTING HOMICIDE WAS TO GO TO THIS RESIDENCE, THE PREVIOUS RESIDENCE, THE RESIDENCE PRIOR TO MR. STANSBURY?

A. YES.

Q. DID YOU HAVE ANY INFORMATION FROM ANYBODY PRIOR TO ARRIVING AT MR. STANSBURY'S RESIDENCE ABOUT THE CASE?

A. NO.

[2332] Q. HAVE YOU REVIEWED ANY POLICE REPORTS OR TALKED TO ANYBODY ABOUT THE CASE?

A. NO.

MR. ROBUSTO: I HAVE NOTHING FURTHER, YOUR HONOR.

MR. BURNS: NO QUESTIONS.

THE COURT: THANK YOU.

OFFICER, YOU MAY STEP DOWN. YOU ARE FREE TO GO.

MR. DAUGHERTY: YOUR HONOR, I WONDER IF WE COULD HAVE A BRIEF CONFERENCE WITH MR. STANSBURY BEFORE PROCEEDING.

THE COURT: YOU MAY.

MR. DAUGHERTY: YOUR HONOR, IF I MAY SPEAK TO MR. BENART OUTSIDE.

THE COURT: YES.

(RECESS.)

MR. DAUGHERTY: IN THIS MOTION, YOUR HONOR, IT'S MR. STANSBURY'S DESIRE - WE HAVE ONE ADDITIONAL WITNESS THAT HE FEELS, CONSIDERING ALL THE TESTIMONY WE'VE HAD IN THE LAST COUPLE OF DAYS, WOULD BE HELPFUL TO THE COURT AND RELEVANT TO THE ISSUE OF THE MIRANDA HEARING.

THAT IS A JAILER FROM THE POMONA POLICE DEPARTMENT FACILITY. NO SPECIFIC JAILER, ANY JAILER WHO IS FAMILIAR WITH THE FACILITY IN 1982, SEPTEMBER OF 1982, WHO CAN DESCRIBE FOR THE COURT WHAT BOTH THE JAIL AND THE UPSTAIRS INTERVIEW ROOM FACILITIES CONSIST OF.

WHAT WE WOULD DO, IN THE INTEREST OF TIME, IS REQUEST FROM MR. BURNS HIS COOPERATION IN PERHAPS, HAVING [2333] TOMORROW MORNING, HAVING SOME REPRESENTATIVE FROM POMONA POLICE DEPARTMENT COME OVER AND TESTIFY.

THE COURT: TOMORROW FRIDAY, OR MONDAY?

MR. DAUGHERTY: I GUESS IT WOULD HAVE TO BE MONDAY.

THE COURT: I WOULD NOT ANTICIPATE THAT TESTIMONY TO BE WHAT, MORE THAN FIVE, TEN MINUTES.

MR. BURNS: I THINK THE TESTIMONY IS TOTALLY IRRELEVANT AT THIS POINT IN TIME. I DON'T UNDERSTAND WHAT A GENERAL JAILER CAN DO.

THE COURT: I WOULD SUSPECT IT'S TO BOLSTER THE ARGUMENT WE'VE GOT SECURITY AND NON-SECURITY INTERVIEW ROOMS.

THEY PUT HIM IN A SECURITY ONE, AND MR. YUSUF IN A NON-SECURITY, WHICH WOULD INDICATE THAT -

MR. BURNS: THAT'S CLEAR, YOUR HONOR.

I SUSPECT THAT'S WHAT THE ARGUMENT IS.

BUT THE RECORD IS ALSO CLEAR THAT'S WHAT THEY DID. I KNOW IT; THE COURT KNOWS IT. IT'S ON THE RECORD.

A PERSON TELLING ME WHERE VARIOUS ROOMS IN THE POMONA JAIL ARE LOCATED HAS ABSOLUTELY NOTHING TO DO WITH THE RELEVANT ISSUE AT THIS POINT IN TIME.

CERTAINLY THAT JAILER WOULD NOT HAVE ANY IDEA AS TO WHAT IT SPECIFICALLY DID ON THE DAY IN QUESTION.

THE COURT: IS THAT THE THRUST OF THE ARGUMENT?

MR. DAUGHERTY: I THINK THAT'S THE GENERAL THRUST OF THE ARGUMENT.

ALTHOUGH A LITTLE MORE SPECIFIC THAN THAT. NOT SIMPLY WHERE ARE THE INTERVIEW ROOMS LOCATED.

[2334] FOR INSTANCE, ARE THE INTERVIEW ROOMS IN THE JAIL SECTION; ARE THEY LOCKED? DO THEY HAVE LOCKING DOORS? ARE THEY USED TO INTERVIEW WITNESSES? ARE THEY USED TO INTERVIEW PEOPLE WHO ARE ARRESTED WHO ARE SUSPECTS. ARE THE ONES UPSTAIRS USED FOR WITNESSES, ORDINARILY, THAT KIND OF THING.

MR. BURNS: THAT WHOLE LINE OF QUESTIONING IS TOTALLY IRRELEVANT.

NORMAL USE BY THE POMONA POLICE OFFICERS IN THEIR OWN FACILITY IS TOTALLY IRRELEVANT TO WHAT LIEUTENANT JOHNSTON DID ON THAT DAY.

THAT WAS THEIR FIRST TIME THERE. WHAT THEIR USES ARE, WHAT THEIR MOTIVES WERE. WE'VE GONE FAR AFIELD ON THIS CASE.

NOW, I KNOW IT'S GOING TO TAKE A LONG TIME, AND I'VE BEEN ATTEMPTING TO BE MORE

THAN PATIENT IN OTHER AREAS, BUT THIS IS JUST RIDICULOUS.

THAT'S MY CHARACTERIZATION AND MY ATTITUDE, OBVIOUSLY.

DEFENDANT STANSBURY: I WOULD SPECIFY FOR THE RECORD, YOUR HONOR, THAT NUMBER 1, SUCH AN OFFICER WHO WAS FAMILIAR WITH THE BASIC POLICE DEPARTMENT WITHIN POMONA WOULD QUITE CONCEIVELY BE ABLE TO TESTIFY THAT THE INTERROGATION ROOMS ARE LOCATED WITHIN THE GENERAL OFFICE OF THE DETECTIVE BUREAU, AND THAT IT IS A NUMBER OF SMALL ROOMS LOCATED ALONG ONE SIDE OF THE WALL; THAT THE DOOR TO THE DETECTIVES OFFICES IS AVAILABLE FROM THE PUBLIC STAIRWAY.

[2335] THAT ONCE YOU UNLOCK THE DOOR LEADING INTO THE AREA WHERE THE DETECTIVES OFFICES ARE, I SHOULD SAY THE DETECTIVE OFFICE WITH NUMEROUS DESKS WITHIN THAT ONE LARGE OFFICE, AND THAT THERE ARE NO DOORS ON THE INTERVIEW ROOMS, THEREIN.

THAT ONCE AN INDIVIDUAL GETS PASSED THAT ONE DOOR, WHICH HAS ALREADY BEEN ASCERTAINED THAT IT - AT LEAST ONE WAS LOCKED. THAT AN INDIVIDUAL COULD SIMPLY WALK OUT.

WHEREAS IN THE DETENTION AREA ITSELF, QUITE OBVIOUS THAT THERE ARE LOCKED DOORS.

HOW MANY LOCKED DOORS ARE THERE? HOW HARD WOULD IT BE FOR ME TO HAVE WALKED OUT?

WOULD ONE OF THE POMONA POLICE OFFICERS HAVE ALLOWED ME TO LEAVE HAD I SO DESIRED WITHOUT SPECIFIC INSTRUCTION FROM DETECTIVE JOHNSTON UNDER THEIR NORMAL PROCEDURES.

THERE ARE NUMEROUS THINGS THAT THE OFFICER COULD VERY WELL CLARIFY IN THIS ENTIRE MATTER.

MR. BURNS: EVERYTHING MR. STANSBURY HAS SAID IS TOTALLY IRRELEVANT TO THE ISSUE.

EVEN ASSUMING THE OFFICER CAME IN AND TESTIFIED TO THOSE THINGS, AS TO THE LAST POINT, DETECTIVE JOHNSTON ALREADY TESTIFIED IF MR. STANSBURY WANTED TO LEAVE AT ANY TIME, HE WOULD HAVE GOT HIM OUT OF THERE.

WHATEVER POMONA'S NORMAL PROCEDURES ARE, HOW MANY DOORS THEY MAY HAVE NEEDED TO ACCOMPLISH THE ACT IS NOT RELEVANT.

[2336] THE COURT: IS THAT THE LAST WITNESS YOU'RE GOING TO CALL?

MR. DAUGHERTY: YES.

THE COURT: DO YOU EXPECT TO CALL A JAILER WHO IS THERE AT THE TIME WHO WOULD TESTIFY?

MR. DAUGHERTY: NOT WHO WAS PHYSICALLY PRESENT AT THE TIME MR. STANSBURY WAS THERE.

BUT I THINK SOMEONE WHO AT LEAST WAS EMPLOYED IN SEPTEMBER OF 1982, SO THAT HE

WOULD KNOW WHAT THE FACILITIES WERE LIKE THEN.

THE COURT: HOW LONG DO YOU EXPECT THAT IT WOULD TAKE TO PRESENT THIS EVIDENCE?

DEFENDANT STANSBURY: I BELIEVE THAT WOULD PRIMARILY DEPEND UPON MR. BURNS, YOUR HONOR, BECAUSE OF THE FACT THAT I BELIEVE THAT AS AN EXAMPLE, IF MR. DAUGHERTY OR MR. -

THE COURT: GIVE ME AN ESTIMATE.

MR. DAUGHERTY: I WOULD SAY I WOULD ESTIMATE PERHAPS 15 MINUTES TOTAL, INCLUDING CROSS-EXAMINATION.

THE COURT: ALL RIGHT, I'LL ALLOW IT.

10:30, MONDAY MORNING.

IT'S YOUR RESPONSIBILITY TO GET THAT PERSON HERE.

I WOULD LIKE TO CONCLUDE WITH THAT EVIDENCE AND THEN ARGUE ON THIS MOTION.

MR. BURNS: I BELIEVE WE'RE DOING THE PHOTO I.D. ISSUES ARE THE NEXT MOTIONS WE'RE PLANNING ON DOING.

[2337] MR. DAUGHERTY: WHEN THE COURT SAYS "OUR RESPONSIBILITY TO GET THAT PERSON HERE," WE HAD ALSO REQUESTED THE COOPERATION AND ASSISTANCE OF MR. BURNS.

THE REASON FOR THAT BEING IS THAT THERE IS NO ONE PARTICULAR INDIVIDUAL WE WOULD SUBPOENA.

I DON'T WISH TO SUBPOENA TEN JAILERS.

IT MIGHT BE EASIER FOR MR. BURNS THROUGH A PHONE CALL TO OBTAIN COOPERATION FROM THAT DEPARTMENT AND TO MAKE CERTAIN THAT HE CAN GET SOMEONE OVER HERE THAT HAS BEEN EMPLOYED BY THE DEPARTMENT FOR A COUPLE OF YEARS.

MR. BURNS: I'LL ATTEMPT TO CALL TO SEE IF THEY HAVE SOME JAILER STILL WORKING.

I CANNOT AT THIS TIME ON THE RECORD SAY I WOULD BE SUCCESSFUL TO LOCATE SUCH A WITNESS.

I'LL LOCATE SOMEONE AND ASK THEM TO COME OVER HERE.

THAT'S THE BEST I CAN DO.

THE COURT: I WISH TO CONCLUDE THIS MOTION MONDAY MORNING.

SINCE WE'RE DOWN TO THAT, I WOULD LIKE TO HEAR ARGUMENT. I DON'T WANT TO PUT IT OVER ANOTHER DAY TO PRODUCE SUCH A WITNESS.

SO I WOULD RECOMMEND YOU CONTACT MR. BURNS SOMETIME TOMORROW AND FIND OUT WHETHER HE'S SUCCESSFUL.

IF NOT, YOU'RE GOING TO HAVE TO TAKE WHATEVER STEPS ARE NECESSARY. AS LONG AS

WE'RE TALKING ABOUT SOMEWHERE IN THE NEIGHBORHOOD OF 15 MINUTES, I'LL LISTEN TO THAT TESTIMONY, AND I'LL LISTEN TO WHATEVER TESTIMONY [2338] IS AVAILABLE AT THAT TIME.

IF ANYBODY HAS SOME OTHER WITNESS THAT YOU THINK HAS SOME RELEVANT EVIDENCE, I CERTAINLY WILL LISTEN TO IT TOO.

IT SOUNDS LIKE WE'RE DOWN TO THE LAST FEW MINUTES.

I WOULD LIKE TO HEAR ARGUMENT. AND I WOULD LIKE TO RULE, WHATEVER WE'RE GOING TO DO WITH THIS MOTION AND GO ON TO THE NEXT MOTION.

DEFENDANT STANSBURY: YOUR HONOR, AT THIS TIME I WOULD LIKE TO BRING TO THE COURT'S ATTENTION WE STILL HAVE THREE DOCUMENTS UPON THE BOARD.

I WOULD LIKE TO HAVE THOSE ENTERED AS EXHIBITS FOR THE DEFENSE AT THIS TIME, D-1, D-2 AND D-3.

MR. BURNS: NO OBJECTION.

THE COURT: IT SHALL BE RECEIVED.

THE CLERK: IS THIS FOR IDENTIFICATION?

THEY HAVE BEEN OFFERED AND RECEIVED.

THERE WAS NO OBJECTION ON THE PART OF THE PEOPLE, AND I HAVE RECEIVED THEM.

(RECEIVED EDID: DFT'S D-1, D-2 & D-3, DRAWINGS)

(AT 4:15 P.M., AN ADJOURNMENT WAS TAKEN
UNTIL MONDAY, NOVEMBER 5, 1984, AT 10:30 A.M.)

[2339] THE COURT: CONTINUING WITH PEOPLE
VERSUS STANSBURY.

THE RECORD SHOULD REFLECT THAT MR.
BURNS, MR. ROBUSTO, MR. DAUGHERTY, AND MR.
STANSBURY ARE PRESENT.

THE COURT: IS THERE ANY OTHER EVI-
DENCE THAT YOU WISH TO BRING FORTH ON THIS
MOTION?

MR DAUGHERTY: YES. MR. STANSBURY
WISHES TO CALL ONE ADDITIONAL WITNESS ON
THIS MOTION.

HE'S PRESENT IN COURT, A SERGEANT ELOFSON
OF THE POMONA POLICE DEPARTMENT.

THE COURT: SERGEANT, STEP FORWARD
PLEASE.

RAISE YOUR RIGHT HAND TO BE SWORN.

GARY SHEA ELOFSON, +
A DEFENSE WITNESS, HAVING BEEN FIRST DULY
SWORN, TESTIFIES A [sic] FOLLOWS:

THE CLERK: YOU DO SOLEMNLY SWEAR
THAT THE TESTIMONY YOU MAY GAVE IN THE
CAUSE NOW PENDING BEFORE THIS COURT SHALL
BE THE TRUTH, THE WHOLE TRUTH AND NOTHING
BUT THE TRUTH, SO HELP YOU GOD.

THE WITNESS: I DO.

THE CLERK: PLEASE TAKE THE WITNESS
STAND.

STATE YOUR NAME FOR THE RECORD AND SPELL YOUR [2340] LAST NAME.

THE WITNESS: GARY SHEA, S-H-E-A, ELOFSON, E-L-O-F-S-O-N.

THE COURT: YOU MAY PROCEED, MR. STANSBURY.

DIRECT EXAMINATION +

BY MR. DAUGHERTY:

Q. SERGEANT ELOFSON, PLEASE STATE YOUR OCCUPATION AND ASSIGNMENT?

A. POLICE SERGEANT FOR THE CITY OF POMONA, PRESENTLY ASSIGNED TO PATROL DIVISION.

Q. DURING THE MONTH OF SEPTEMBER, 1982, WERE YOU ALSO EMPLOYED BY THE POMONA POLICE DEPARTMENT?

A. YES, SIR. I WAS A JAIL SUPERVISOR.

Q. HAS THE CONDITION OF THE JAIL AREA OF POMONA POLICE DEPARTMENT CHANGED IN ANY SUBSTANTIAL WAY SINCE SEPTEMBER OF 1982?

A. NO, IT HAS NOT.

Q. CAN YOU DESCRIBE THE JAIL FACILITY ITSELF?

A. YES, I COULD. YOU WANT ME TO DRAW IT?

Q. JUST DESCRIBE IT?

A. AS YOU DRIVE IN, YOU CAN DRIVE IN ONLY ONE WAY, AND IT'S THROUGH THE POLICE PARKING LOT ON THE SOUTH END OF THE BUILDING, WHICH IS WHAT WE CALL A SALLY PORT, WHICH IS WHERE VEHICLES, POLICE VEHICLES CAN BE DRIVEN IN AND IN A ROLL CAGE, GOES BEHIND THE VEHICLE.

THE FRONT OF THE SALLY PORT, WHICH WOULD BE TOWARD THE FRONT OF THE POLICE CAR, IF YOU WERE DRIVING A [2341] POLICE CAR IN IS ALL GLASS.

THAT'S WHERE THE JAIL SUPERVISOR WOULD BE STATIONED.

IF THERE'S NO SUPERVISOR ON DUTY, IT WOULD BE A SENIOR JAILER.

THAT'S ACTUALLY THE CONTROL AREA FOR THE ENTIRE JAIL.

MOST OF IT IS ELECTRONIC, AND IT IS CONTROLLED FROM THERE.

ON THE WEST SIDE OF THE SALLY PORT IS THE STEEL ROLL DOORS, WHICH IS CONTROLLED BY THE SENIOR JAILER OR THE JAILERS.

THAT'S THE ONLY WALK-IN ENTRY FROM THE SOUTH SIDE.

ONCE YOU ENTER FROM THAT LOCATION, TO YOUR RIGHT WOULD BE THE JAIL CONTROL AREA, THE JAIL OFFICE.

TO THE LEFT WOULD BE A HALLWAY WHICH LEADS OUT THE WEST ENTRANCE OR EXIT OF THE JAIL.

STRAIGHT IN FRONT OF YOU, WHICH WOULD BE TO THE NORTH, WOULD BE A CORRIDOR WHICH LEADS TO INTERVIEW ROOMS.

AND AT THE FAR END OF THAT WOULD BE THE JUVENILE HOLDING CELLS.

ABOUT 15 TO 20 STEPS INTO THE JAIL IS WHERE THE BOOKING CAGE OR BOOKING COUNTERS BEGIN.

WHERE THE BOOKING COUNTERS BEGIN ON YOUR RIGHT-HAND SIDE IS WHERE THE INTERVIEW ROOMS BEGIN ON YOUR LEFT-HAND SIDE.

[2342] THERE'S THREE ROOMS THERE.

Q. THREE INTERVIEW ROOMS DOWNSTAIRS?

A. YES. ONE OF THEM IS CALLED AN INTERVIEW ROOM.

HOWEVER, IT'S MORE OF A HOLDING CELL.

IT DOESN'T HAVE TABLES. IT DOES HAVE A BENCH. AND THAT'S WHERE PRISONERS ARE PUT FOR PURPOSES OF THE STRIP SEARCH.

IT HAS A SMALL FLOOR DRAIN IF A PERSON HAS TO URINATE PRIOR TO BEING BOOKED, OR AFTER BEING BOOKED AND HASN'T BEEN HOUSED.

NORTH OF THAT IS AN INTERVIEW ROOM, ROOMS 121 AND 122.

Q. WHAT IS THE FUNCTION OF THOSE INTERVIEW ROOMS?

A. THOSE INTERVIEW ROOMS ARE FOR INTERVIEWING. NORMALLY, THEY'RE USED BY ATTORNEYS, OFFICERS, BAIL BONDS MEN.

Q. PRISONERS ARE PUT THERE PRIOR TO OR AFTER BOOKING UNTIL THEY CAN BE HOUSED.

THEY'RE USED FOR HOLDING OF A PERSON THAT IS NOT GOING TO BE BOOKED OR HAS BAIL BOND MONEY IN ROUTE OR ATTEMPTING TO OBTAIN BAIL MONEY.

BASICALLY, IT IS AN ALL-PURPOSE ROOM OTHER THAN FOR HOUSING.

Q. ARE THERE ALSO INTERVIEW ROOMS UPSTAIRS IN THE POLICE DEPARTMENT PROPER?

A. YES, THERE IS.

[2343] Q. HOW MANY OF THOSE ARE THERE?

A. THERE ARE TWO ROOMS, TWO INTERVIEW ROOMS.

Q. WHAT IS THE FUNCTION OF THOSE ROOMS?

A. THOSE SAME TYPE THING, INTERVIEWS ONLY.

THEY'RE TWO WAYS TO GET TO THOSE ROOMS.

THE NORMAL WAY IS ONCE YOU'VE RESPONDED TO THE SECOND FLOOR OF THE POLICE DEPARTMENT, THEY WOULD BE LOCATED INTO THE CENTER OF THE UPSTAIRS ON THE SOUTH END OF THE BUILDING.

THEY CAN BE ENTERED FROM THE CORRIDOR OR HALLWAY, WHICH LEADS FROM THE PUBLIC AREA BACK TOWARDS THE ADMINISTRATIVE OFFICES, WHICH WOULD BE TOWARDS THE SOUTH.

IF YOU'RE COMING IN THAT WAY, THE DOORS WOULD BE ON YOUR WEST SIDE. THEY ATTACH TO EACH OTHER. THEY'RE SEPARATED BY A WALL, BUT THEY'RE ATTACHED TO EACH OTHER.

THERE'S DOORWAYS ON THE EAST SIDE, WHICH WOULD BE THE DOORWAYS YOU WOULD ENTER FROM THAT HALLWAY, AND DOORS ON THE WEST SIDE OF THEM, WHICH COULD BE ENTERED FROM THE DETECTIVE BUREAU.

Q. ANY KIND OF - WHAT KIND OF LOCKING MECHANISM IS THERE ON THE INTERVIEW ROOMS THAT ARE ON THE JAIL PROPER DOWNSTAIRS?

A. ALL THE JAIL DOORS ARE STEEL. EVERY DOOR IN THE JAIL LEADING INTO OR OUT OF THE JAIL IS STEEL.

THE INTERVIEW ROOMS ARE OPERATED BY KEY ONLY.

THEY'RE NOT OPERATED ELECTRONICALLY.

Q. DO THEY LOCK AUTOMATICALLY?

A. IF YOU PULL THEM CLOSED, YES, THEY DO.

[2344] Q. YOU CANNOT GET OUT FROM THE OUTSIDE WITHOUT A KEY?

A. FROM THE INTERVIEW ROOMS?

Q. YES.

A. NO, YOU CANNOT.

Q. IS THAT THE SAME UPSTAIRS?

A. I THINK SO.

I THINK UPSTAIRS IS KEYED FROM BOTH SIDES.

NORMALLY, THESE DOORS AREN'T CLOSED, THE HOLDING ROOMS, INTERVIEW ROOMS. NORMALLY, THE DOORS ARE OPEN.

UPSTAIRS, IF DETECTIVES AREN'T THERE, THE DETECTIVE BUREAU IS LOCKED UP ALSO.

THESE ROOMS ARE NORMALLY LOCKED. YOU NEED THE KEY DO GET INTO IT.

Q. COULD A PERSON LEAVE THE JAIL AREA WITHOUT ASSISTANCE FROM A POMONA POLICE OFFICER TO LEAVE TO GET OUTSIDE?

A. NO.

Q. ARE THE INTERVIEW ROOMS DOWNSTAIRS IN THE JAIL USED EITHER EXCLUSIVELY OR PRIMARILY FOR PEOPLE IN CUSTODY?

A. WELL, IN CUSTODY YOU WOULD HAVE TO BE WITH A POLICE OFFICER OR BE A POLICE OFFICER TO GET INTO THERE.

YOU COULDN'T GET INTO THE JAIL UNLESS YOU WERE A POLICE OFFICER OR A SHERIFF OR A DEPUTY OR AN ATTORNEY.

YOU COULDN'T GET IN THERE, INTO THE JAIL [2345] ITSELF.

Q. BUT YOU CONDUCT INTERVIEWS WITH CERTAIN PEOPLE IN THOSE ROOMS DOWNSTAIRS.

WOULD THOSE ORDINARILY BE PEOPLE WHO ARE ALREADY IN CUSTODY OR CONFINED WITHIN THE JAIL OR GOING TO BE?

A. ARE GOING TO BE, YES.

IF YOU HAD A SUSPECT IN MIND, A PERSON IN MIND YOU WANTED TO INTERVIEW THEM IF YOU'RE A POLICE OFFICER OR DEPUTY, YOU COULD BE ALLOWED TO GO IN THERE AND USE THOSE ROOMS, YES.

Q. IF YOU HAVE AN ORDINARY CITIZEN INFORMANT THAT YOU'RE TALKING TO, WOULD YOU NORMALLY TAKE THAT PERSON UPSTAIRS IN THOSE ROOMS RATHER THAN THE JAIL?

MR. BURNS: OBJECTION. IRRELEVANT WHAT THIS OFFICER WOULD DO WHO WAS FAMILIAR WITH THE POMONA POLICE OFFICERS WHO WAS EMPLOYED BY THE POMONA POLICE DEPARTMENT AS OPPOSED TO OFFICERS WHO WERE NOT FAMILIAR WITH THE POMONA POLICE DEPARTMENT, OFFICERS NOT EMPLOYED BY THE POMONA POLICE DEPARTMENT.

THE COURT: SUSTAINED.

MR DAUGHERTY: THE ONLY THING IS - THE ONLY STANDARD ISN'T SIMPLY WHAT IS WITHIN THE MIND OF THE INTERROGATING OFFICER. ALSO WHAT IS IN THE MIND OF THE DEFENDANT. WHAT HE WAS REASONABLY LED TO BELIEVE.

IT MAY BE RELEVANT WHAT IS NORMALLY DONE IN POMONA BY POMONA POLICE OFFICERS, BECAUSE OF WHAT IS IN THE MIND OF THE DEFENDANT, NOT -

[2346] MR. BURNS: WHAT WOULD BE IN THE MIND OF THE POMONA POLICE DEPARTMENT WOULD BE IRRELEVANT.

HE COULD DESCRIBE THE CIRCUMSTANCES AS HE HAS DONE AS TO THE PHYSICAL SETTING. CERTAINLY CANNOT INDICATE WHAT WAS IN HIS MIND, ANYWHERE RELATED TO WHAT WAS IN MR. STANSBURY'S MIND.

THE COURT: OVERRULED. YOU MAY ANSWER.

THE WITNESS: COULD YOU REASK THE QUESTION.

MR DAUGHERTY: COULD YOU READ THE QUESTION.

(THE RECORD WAS READ BY THE REPORTER.)

THE WITNESS: YES, I WOULD.

MR DAUGHERTY: NOTHING FURTHER.

CROSS-EXAMINATION +

BY MR. BURNS:

Q. OFFICER, DO YOU ALLOW OTHER LAW ENFORCEMENT PERSONNEL FROM OTHER AGENCIES TO BRING PEOPLE TO YOUR JAIL AREA AND CONDUCT INTERVIEWS IN THAT JAIL AREA?

A. YES, SIR, WE DO.

Q. AND AFTER HOURS - WHEN I SAY AFTER HOURS, AFTER NORMAL BUSINESS HOURS, IS THE DETECTIVE BUREAU NORMALLY CLOSED AND LOCKED?

A. YES, IT IS.

Q. ARE THOSE INTERVIEW ROOMS NORMALLY CLOSED AND LOCKED?

A. YES, THEY ARE.

Q. IF YOU WERE A POLICE OFFICER, SAY, GOING TO A FOREIGN STATION OR A STATION THAT YOU WERE NOT FAMILIAR [2347] WITH AFTER HOURS, SPECIFICALLY, SAY, ABOUT 11:00 P.M. AT NIGHT, WOULD YOU NORMALLY TAKE SOMEONE THAT YOU WISH TO INTERVIEW, WHETHER THEY WERE A CITIZEN INFORMANT OR NOT, TO A SALLY PORT AREA SO YOU CAN MAKE CONTACT WITH SOMEONE FROM THE JAIL AREA?

A. YES.

MR. BURNS: THANK YOU. I HAVE NO FURTHER QUESTIONS.

MR DAUGHERTY: NO FURTHER QUESTIONS.

THE COURT: THANK YOU, OFFICER.

YOU MAY STEP DOWN. YOU'RE FREE TO GO.

MR DAUGHERTY: DEFENSE RESTS AS FAR AS THIS MOTION IS CONCERNED.

MR. BURNS: WE HAVE NO ADDITIONAL EVIDENCE WITH REGARDS TO THIS PARTICULAR MOTION.

THE COURT: MATTER SUBMITTED? YOU WISH TO ARGUE?

MR DAUGHERTY: I WOULD LIKE TO MAKE A FEW COMMENTS.

EVEN FROM A FACTUAL STANDPOINT, THE EVIDENCE THAT HAS BEEN BROUGHT OUT BEFORE THE COURT, THE SIGNIFICANCE TO AGAIN REITERATE TO THE COURT.

I THINK THE COURT IS WELL AWARE FROM ALL THE TESTIMONY WE'VE HAD, WHAT INFORMATION THE POLICE OFFICERS, SPECIFICALLY LIEUTENANT JOHNSTON HAD REGARDING AN ICE CREAM TRUCK DRIVER BEFORE THE CONVERSATION WITH MR. STANSBURY.

I THINK ONE OF THE KEY ELEMENTS OF THIS MOTION IS WHAT A REASONABLE PERSON SUCH AS IN THIS CASE, [2348] MR. STANSBURY, WOULD HAVE FELT HIMSELF. WHAT HE WOULD HAVE FELT ABOUT THE FACT THAT THERE WAS A CUSTODIAL INTERROGATION.

THE POLICE OFFICERS ARRIVED TO INTERVIEW, TO CONTACT MR. STANSBURY AT HIS TRAILER PARK APPROXIMATELY 11 O'CLOCK AT NIGHT.

WHEN HE ARRIVED AT THE FRONT DOOR OF HIS TRAILER AND LOOKED OUT, THERE WAS A POLICE OFFICER DIRECTLY IN FRONT OF HIM WITH A GUN, A FIREARM IN HIS HAND.

THERE WERE THREE OTHER POLICE OFFICERS STANDING OUT IN FRONT OF HIM, FANNED OUT IN FRONT OF HIM. ONE IN FRONT; ONE 20 FEET OR SO BACK. ALL THREE OF THOSE ADDITIONAL POLICE OFFICERS HAD THEIR FIREARMS IN THEIR HANDS.

HE WAS THEN ASKED TO GO DOWN TO THE POMONA POLICE STATION. THEY WOULD PROVIDE TRANSPORTATION FOR HIM.

AFTER BEING TAKEN TO THE POMONA POLICE STATION, HE IS DRIVEN NOT TO THE POLICE STATION ITSELF, BUT HE IS TAKEN TO THE JAIL.

THE AUTOMOBILE DRIVES INTO THE SALLY PORT OF THE JAIL.

ONCE THE AUTOMOBILE GOES IN, IT GOES IN THROUGH AN ELECTRONIC GATE THAT GOES BEHIND THE VEHICLE.

HE IS TAKEN OBVIOUSLY IN A SECURE AREA, JAIL AREA.

HE KNOWS IS GOING TO BE UNABLE TO LEAVE [2349] WITHOUT THE ASSISTANCE OF OTHER POLICE OFFICERS.

AFTER BEING PUT IN AN INTERVIEW ROOM, HE IS INTERVIEWED FOR A PERIOD OF APPROXIMATELY 30, 45 MINUTES.

THE KEY TO MIRANDA IS ONE, THE SITE OF INTERROGATION WHICH IN THIS CASE WAS THE INTERIOR OF THE POLICE JAIL WITHIN ABOUT 10, 15 FEET OF THE BOOKING AREA, WITHIN A MATTER OF FEET WITHIN THE JAIL CELLS THEMSELVES.

SECONDLY, WELL THE INVESTIGATION HAD THE SUSPICION, HAD ACTUALLY FOCUSED ON THIS DEFENDANT, AND WE HAVE TO MAKE A DETERMINATION AS TO WHAT POINT IN TIME SUSPICION HAD ACTUALLY FOCUSED ON MR. STANSBURY.

THREE VERY IMPORTANT ISSUES IN THIS CASE. WHETHER THE OBJECTIVE INDICIA IN THIS CASE FOR ARREST OR CUSTODY WAS PRESENT FOR MR. STANSBURY TO SEE. LASTLY, THE LENGTH AND FORM OF QUESTIONING.

MR. STANSBURY IS IN THE JAIL AREA. AND HE, I THINK, REASONABLY CAN ASSUME THAT HE IS CERTAINLY IN A CUSTODIAL SETTING.

HE IS BEING ASKED QUESTIONS THAT GO WELL BEYOND WHAT DID HE OBSERVE ON THE AFTERNOON OF THE 28TH, IN THE AREA.

HE IS BEING ASKED SPECIFIC QUESTIONS ABOUT HIS ROUTE TO THAT LOCATION, HIS ROUTE HOME THAT EVENING, WHERE HE STOPPED FOR GASOLINE, WHAT KIND OF GASOLINE HE BOUGHT, WHAT KIND OF STATION, HOW LONG IT TOOK HIM, WHY HE TOOK A PARTICULAR ROUTE.

HE WAS THEN ASKED IF HE TOOK HIS AUTOMOBILE LATER OUT THAT NIGHT AT 12 O'CLOCK.

[2350] THERE'S ONE POINT IN TIME, AND I THINK NO ONE WOULD DISAGREE, INCLUDING MR. BURNS, THAT THE FOCUS OF SUSPICION CAME RIGHT DOWN TO MR. STANSBURY.

IN FACT, DETECTIVE JOHNSTON AGREED ALSO.

HE ASKED THE QUESTION WHEN HE LEARNED THAT MR. STANSBURY HAD TAKEN A VEHICLE AFTER MIDNIGHT THAT NIGHT.

HE ASKED A SPECIFIC QUESTION, "WOULD YOU DESCRIBE THAT VEHICLE."

AND HE INDICATED THAT HE KNEW HE ALREADY HAD IN MIND A DESCRIPTION OF A VEHICLE.

HE KNEW THE DESCRIPTION OF THE VEHICLE THAT HAD BEEN INVOLVED, DUMPING THE BODY IN THIS CASE.

AND HE SUSPECTED THAT HE MIGHT GET THE SAME DESCRIPTION FROM MR. STANSBURY, THE REASON HE ASKED THE QUESTION.

ARGUABLY, AT THAT POINT IN TIME WHEN HE ASKED THAT QUESTION, THE FOCUS OF SUSPICION HAD NARROWED DOWN TO MR. STANSBURY.

CERTAINLY WHEN MR. STANSBURY DESCRIBED THE VEHICLE HE TOOK OUT AND EXACTLY MATCHED THE DESCRIPTION OF THE VEHICLE THAT HAD DUMPED THE VICTIM'S BODY IN PASADENA, AT THAT POINT IN TIME HE ADMITTED ON THE STAND DEFINITELY THE FOCUS OF SUSPICION HAD COME DOWN TO MR. STANSBURY AT THAT TIME.

THERE WERE TWO ADDITIONAL QUESTIONS ASKED. ONE, WHAT IS YOUR PAST RECORD; AND TWO, QUESTIONS REGARDING WHETHER OR NOT MR. STANSBURY WOULD TAKE A [2351] POLYGRAPH LIE DETECTOR TEST.

I THINK UNQUESTIONABLY - I DOUBT THAT MR. BURNS WOULD REALLY ARGUE AGAINST IT. THOSE TWO STATEMENTS, THE STATEMENTS REGARDING THE PAST RECORD AND THE STATEMENTS REGARDING NOT TAKING A POLYGRAPH TEST.

THOSE TWO STATEMENTS SHOULD VERY CLEARLY AND ALMOST UNCONTESTABLY BE SUPPRESSED AS A VIOLATION OF MIRANDA.

THE QUESTION IS GOING TO BE FOR THAT PERIOD OF TIME, AT WHAT POINT OF TIME DID THE FINGER OF SUSPICION ACTUALLY FOCUS ON MR. STANSBURY, AND AT WHAT POINT IN TIME DID HE FEEL HE WAS IN A CUSTODIAL INTERROGATION SITUATION.

OUR CONTENTION IS THAT THE INFORMATION THAT DETECTIVE JOHNSTON HAD WHICH WAS THAT A LITTLE GIRL DISAPPEARED AND LATER FOUND OUT SHE HAD BEEN KILLED. THE LAST PERSON - THE INFORMATION HE HAD WAS THE LAST PERSON SHE HAD SEEN WAS AN ICE CREAM TRUCK DRIVER WITH RED HAIR AND A BUSHY RED BEARD; THAT SHE HAD HAD A PREARRANGED MEETING WITH THIS CREAM TRUCK DRIVER AFTER DINNER.

IN FACT, THAT ICE CREAM TRUCK DRIVER HAD BEEN UNUSUALLY FRIENDLY TO ROBYN JACKSON.

HE HAD - THERE WAS ALSO AN INTERVIEW OF THE NEIGHBORS, AND THAT NAME KEPT COMING UP, ICE CREAM TRUCK DRIVER KEPT COMING UP.

OBVIOUSLY, ALL ICE CREAM TRUCK DRIVERS WERE POSSIBLY SUSPECTS.

BUT WHEN YOU LOOK AT THE WAY MR. STANSBURY WAS HANDLED, THAT IS NUMBER ONE.

[2352] FOUR OFFICERS WENT DOWN TO PICK HIM UP. ALL FOUR OFFICERS DREW THEIR FIREARMS.

I DON'T THINK IT'S THAT COMMON THAT OFFICERS, POLICE OFFICERS IN THE FIELD WHEN TALKING TO WITNESSES WILL DRAW THEIR FIREARMS, NOT UNLESS THERE'S A SPECIFIC REASON TO DO SO, GOOD REASON TO DO SO.

HE IS THEN TAKEN, NOT TO AN INTERVIEW ROOM IN THE POLICE DEPARTMENT. HE IS TAKEN TO THE JAIL PROPER ITSELF, INTO AN INTERVIEW ROOM.

I FEEL HE REASONABLY FELT HE WAS CONFINED AND IN CUSTODY AT THAT POINT IN TIME.

AND THE QUESTIONING WAS DIRECTLY RELATED TO OBTAINING INCRIMINATORY INFORMATION IN THIS CASE AND LASTED AT LEAST 30 TO 45 MINUTES.

UNDER THOSE CIRCUMSTANCES, WE FEEL THAT THAT STATEMENT, WELL BEFORE THE STATEMENT REGARDING HIS PAST RECORD AND THE POLYGRAPH, STATEMENTS WELL BEFORE THAT SHOULD BE SUPPRESSED.

WE'LL SUBMIT IT.

THE COURT: I'M SORRY. WHEN YOU SAY STATEMENTS, WHAT SPECIFIC STATEMENTS ARE YOU DIRECTING YOURSELF TO?

YOU SAID THE STATEMENT ABOUT THE PAST RECORDS, THE STATEMENT ABOUT THE POLYGRAPH. AND THEN YOU SAID STATEMENTS WELL BEFORE THAT.

MR. DAUGHERTY: YES, I'M TALKING ABOUT THE STATEMENT, FOR INSTANCE, OF THE - ALL OF THE STATEMENTS.

AT SOME POINT IN TIME THE COURT HAS TO BASICALLY GO BACKWARDS FROM THERE, I THINK.

[2353] WE WOULD ASK THAT ALL THE STATEMENTS MR. STANSBURY MADE TO THE POLICE THAT EVENING BE SUPPRESSED.

THE COURT: ALL RIGHT. THANK YOU.

MR. BURNS?

MR. BURNS: THANK YOU, YOUR HONOR.

YOUR HONOR, THE DEFENSE MAKES AN ARGUMENT WHICH WAS A LITTLE DIFFICULT TO FOLLOW.

I WOULD INDICATE TO THE COURT, NUMBER ONE, I HAD SOME WRITTEN POINTS AND AUTHORITIES, AND I WOULD LIKE TO PROCEED UNDER THAT ARGUMENT OR THAT FORMAT.

THE COURT: YES.

MR. BURNS: NUMBER 1. WHAT THE DEFENSE HAS ATTEMPTED TO ESTABLISH DURING THE TESTIMONY AT THIS POINT IN TIME APPARENTLY WAS TO LAY SOME FOUNDATION FOR THEIR BELIEF THAT THE INVESTIGATING OFFICER IN SOME WAY WAS SUSPICIOUS OF MR. STANSBURY OR HE

WAS THE PRIME FOCUS OF HIS SUSPICIONS AT THAT TIME.

I THINK IF ANYTHING, THE EVIDENCE HAS TENDED TO SHOW THE CONTRARY OF THAT.

BUT WHETHER THAT IS TRUE OR NOT, LEGALLY SPEAKING, I DON'T BELIEVE THAT THAT HAS ANY SIGNIFICANT RELEVANCE.

AND I'D START FIRST WITH THE FEDERAL RULE WHICH I HAD CITED TO THE COURT, OREGON VERSUS MATHIESON, 429 U.S. AT PAGE 495, 1977 CASE. WHERE THE U.S. SUPREME COURT BASICALLY INDICATED "POLICE OFFICERS ARE NOT REQUIRED TO ADMINISTER MIRANDA WARNINGS TO EVERYONE WHOM THEY QUESTION. NOR IS THE REQUIREMENT OF WARNING TO BE [2354] IMPOSED SIMPLY BECAUSE THE QUESTIONING TAKES PLACE IN THE STATION HOUSE, OR BECAUSE THE QUESTIONED PERSON IS ONE WHOM THE POLICE SUSPECT AT THAT POINT IN TIME."

THE MIRANDA WARNINGS ARE REQUIRED ONLY WHEN THERE HAS BEEN SUCH A RESTRICTION ON A PERSON'S FREEDOM AS TO RENDER HIM IN CUSTODY."

IT IS THAT SORT OF COERCIVE ENVIRONMENT WHICH MIRANDA BY HIMSELF WAS MADE APPLICABLE AND MADE LIMITED."

THE FACTS OF MATHIESON, THE POLICE SUSPECTED THAT THE DEFENDANT HAD COMMITTED A BURGLARY. BUT THEY KNEW THAT THE DEFENDANT WAS THEN ON PAROLE.

THEY LEFT WORD WITH THE DEFENDANT AT HIS HOUSE FOR HIM TO CALL.

AFTER THE DEFENDANT CALLED, THE POLICE ASKED HIM TO COME DOWN TO THE STATION FOR AN INTERVIEW.

THIS INTERVIEW, WHICH WAS COMPLETED IN A CLOSED ROOM, WAS DONE WITHOUT MIRANDA WARNINGS.

PRIOR TO THE INTERVIEW, THE DEFENDANT WAS TOLD TO HIS FACE THAT HE WAS A SUSPECT.

ALTHOUGH HE WAS NOT GOING TO BE ARRESTED, HE WAS FALSELY TOLD THAT HIS FINGERPRINTS WERE FOUND AT A BURGLARY SCENE, AND HIS COOPERATION COULD ONLY HELP HIM IN THE FUTURE.

AT THAT POINT IN TIME, THE DEFENDANT CONFESSED AFTER BEING TOLD HE WAS A DEFENDANT AT THE STATION HOUSE.

THE U.S. SUPREME COURT SAID THAT WAS [2355] ADMISSIBLE; NO MIRANDA RIGHTS WERE RECOVERED.

RETURNING TO THE STATE RULES IN CALIFORNIA. WE HAVE MUCH THE SAME ANALOGOUS SITUATION.

IN THE CASE OF IN RE DANNY G., 121 CAL.APP.3D AT PAGE 44, A 1981 CASE, DEALS WITH A VERY SIMILAR SITUATION, WHERE THE POLICE ARE SUSPICIOUS THAT THE DEFENDANT WAS THE PERSON RESPONSIBLE FOR THE ACT IN QUESTION.

THAT THE QUESTIONING THEMSELVES WAS IN THE NATURE OF AN ACCUSATORY QUESTIONING AS INSTEAD OF AN OPPORTUNITY FOR THE WITNESS MERELY TO EXPLAIN WHAT HE KNEW.

THE COURT IN THAT CASE HELD THE POLICE DID NO MORE THAN GIVE THE APPELLANT THE OPPORTUNITY TO EXPLAIN AWAY SUSPICIOUS CIRCUMSTANCES AND HOPEFULLY TO COOPERATE WITH THEM IN THEIR EFFORTS TO APPREHEND THE TWO CULPRITS.

NO MIRANDA RIGHTS WERE REQUIRED.

THE PERSON WAS NOT UNDER ARREST.

IN THE SAME SITUATION, PEOPLE VERSUS SALINAS, 131 CAL.APP.3D AT PAGE 925. IT'S A 1983 CASE.

PEOPLE VERSUS SALINAS INVOLVED A DEFENDANT WHOM THE POLICE BELIEVED WAS RESPONSIBLE FOR A CHILD ABUSE ALLEGATION.

PRIOR TO INTERVIEWING THE SUSPECT, THEY INFORMED HIM THAT THEY WERE SUSPICIOUS THAT HE WAS RESPONSIBLE FOR THE CHILD ABUSE.

NEVERTHELESS, WITHOUT MIRANDA WARNINGS, THEY ASKED THE DEFENDANT QUESTIONS CONCERNING INJURIES ON THE [2356] VICTIM CHILD, HOW THEY GOT THERE.

THE POLICE LATER TOOK THE DEFENDANT TO THE HOSPITAL WHERE THE CHILD WAS BEING TREATED AND ASKED ADDITIONAL QUESTIONS CONCERNING THE INJURIES.

THE COURT HELD THAT EVEN THOUGH THE FOCUS OF SUSPICION HAD FALLEN ON THE DEFENDANT, EVEN THOUGH THE DEFENDANT LATER WAS MOVED BY THE POLICE, TAKEN TO THE HOSPITAL, THAT THESE QUESTIONS DID NOT REQUIRE MIRANDA WARNINGS.

THE POLICE HAD THE RIGHT TO DETAIN THE DEFENDANT TO ASK QUESTIONS WHICH WERE NOT ACCUSATORY BUT MERELY GIVE THE DEFENDANT AN OPPORTUNITY TO EXPLAIN THE INJURIES AND TO DESCRIBE WHAT ACTIVITY HE DID IN THE CASE IN QUESTION.

EXACTLY THE SAME TYPE OF QUESTIONING THAT WE HAVE IN THIS SITUATION.

THE ONLY ELEMENT OF THE FOUR ELEMENTS WHICH ARE PRESENT IN A STANDARD MIRANDA ANALOGOUS UNDER THE CALIFORNIA LAW, WHICH IN ANY WAY RELEVANT OR PRESENT IN OUR FACT SITUATION, IS THE SITUS OF THE INTERROGATION.

EVEN THE SITUS OF THE INTERROGATION CLEARLY AT A STATION HOUSE IN AN INTERVIEW ROOM WHICH WAS ATTACHED TO A JAIL CELL, EVEN IN NORMAL SITUATIONS IS NOT CONTROLLING.

CASE CITED, PEOPLE VERSUS CARTER, 117 CAL.APP.3D AT PAGE 549, 1982 CASE, DEALT WITH A SITUATION WHERE A DEFENDANT HAD GONE TO A POLICE STATION TO VISIT A PRISONER.

THE POLICE DETECTED A POSSIBLE CRIME. THAT [2357] IS, BRINGING CONTRABAND INTO THE POLICE STATION.

THE POLICE CONTACTED THE SUSPECT, THE DEFENDANT; ASKED HIM TO STEP INTO A SPECIAL OFFICE AREA FOR QUESTIONING.

THEY THEN INFORMED HIM THAT HE WAS IN FACT UNDER SUSPICION AT THAT TIME AND WITHOUT MIRANDA RIGHTS ASKED HIM QUESTIONS CONCERNING THE PRESENCE IN THE STATION HOUSE AND WHAT HE WAS DOING THERE.

THOSE STATEMENTS WERE ADMISSIBLE.

THE CALIFORNIA SUPREME COURT, DEALING WITH THE SIMILAR ISSUE IN PEOPLE VERSUS SAM, 71 CAL. 2D. 194, A 1969 CASE, INDICATED THE SITUATION WHERE A DEFENDANT IS FIRST INTERVIEWED AT A SCENE AND IS LATER ASKED TO COME TO THE POLICE STATION FOR MORE INTENSIVE QUESTIONS.

THAT SUCH A PROCEDURE WAS NOT INHERENTLY COERCIVE, NOR WAS IT NECESSARILY A CUSTODIAL INTERROGATION.

AND AGAIN, STATEMENTS MADE IN THAT SITUATION WERE ADMISSIBLE. THAT'S A GENERAL STATEMENT OF THE LAW.

SPECIFICALLY, THE FACTS THAT WE'VE DEVELOPED IN THIS CASE INDICATE THAT THIS PERSON, MR. STANSBURY, WHEN HE WAS BEING INTERVIEWED WAS IN FACT NOT A SUSPECT TO THIS CASE.

NUMBER ONE, OF COURSE WE HAVE THE TESTIMONY OF THE INVESTIGATING OFFICER, MR. JOHNSTON, THAT HE WAS NOT IN FACT A SUSPECT IN THIS CASE.

WE ALSO HAVE THE GENERAL FACT PATTERN OF WHAT WAS DONE THAT NIGHT, WHICH IS HIGHLY INDICATIVE THAT THAT [2358] TESTIMONY WAS IN FACT TRUE.

EIGHT OFFICERS LEFT FROM THE BALDWIN PARK AREA TO COME TO POMONA. TWO PEOPLE THAT WERE GOING TO BE TALKED TO THAT NIGHT.

ALL EIGHT WENT TO THE OTHER PERSON'S ADDRESS, THE BLACK PERSON, IF YOU WILL, FOR WANT OF A BETTER DESCRIPTION.

THE HOMICIDE OFFICERS AND DETECTIVE BELL MADE ENTRY OR NOTICE TO THAT APARTMENT.

THE HOMICIDE OFFICERS AND DETECTIVE BELL TOOK THAT PERSON WITH THEM AND WENT TO THE POMONA POLICE STATION.

THEY SET UP AND ATTEMPTED TO CONTACT THAT PERSON AND TO START THE INTERVIEW OF THAT PERSON PRIOR TO SPEAKING TO MR. STANSBURY.

THE OFFICERS THAT WERE DISPATCHED TO MAKE CONTACT WITH MR. STANSBURY WERE GIVEN NO INSTRUCTIONS THAT HE WAS A SUSPECT, HAD NO INFORMATION IN THE CASE; WERE NOT TOLD ANYTHING OTHER THAN TO GO CONTACT MR. STANSBURY AND DO ONE VERY IMPORTANT THING. AND THAT WAS ASK MR. STANSBURY TO

COME DOWN TO THE STATION AND TALK TO THE OFFICERS.

AND THEY WERE INFORMED THAT THEY SHOULD TELL MR. STANSBURY THAT HE COULD DRIVE DOWN TO THE STATION HIMSELF IF HE WISHED, OR IF HE NEEDED TRANSPORTATION, TO OFFER THAT TRANSPORTATION TO MR. STANSBURY.

CERTAINLY, SOMEONE WHO IS A SUSPECT, SOMEONE WHO IS IN THAT AREA IS NOT GOING TO BE GIVEN AN [2359] OPPORTUNITY TO UTILIZE HIS OWN TRANSPORTATION TO COME DOWN FOR AN INTERVIEW IF IN FACT HE IS A TRUE SUSPECT.

IN ADDITION, THE HOMICIDE OFFICER HIMSELF TESTIFIED IF HE HAD SOMEONE WHO IS A SUSPECT, HE HIMSELF GOES TO THAT LOCATION AND INITIATES CONTACT.

HE'S NOT JUST GOING TO SEND SOME PEOPLE WHO ARE UNFAMILIAR WITH THE CASE TO MAKE THE INITIAL CONTACT, NUMBER ONE.

NUMBER TWO. NOW, ABOUT THE MANNER IN WHICH MR. STANSBURY WAS ACTUALLY TRANSPORTED TO THE STATION. HE WAS NOT HANDCUFFED. HE WAS NOT RESTRAINED IN ANY MANNER.

HE WAS OFFERED AN OPPORTUNITY TO DRIVE HIS OWN VEHICLE.

BECAUSE HE HAD A PROBLEM, HE WAS ALLOWED TO SIT IN THE FRONT SEAT OF THE POLICE CAR OR THE CAR USED BY THE POLICE TO BE BROUGHT DOWN.

ALL OF THESE ACTIVITIES WHICH ARE NOT NORMALLY ACCORDED SOMEONE WHO WOULD BE VIEWED AS A SUSPECT IN IN FACT A CRIMINAL INVESTIGATION AT THAT POINT IN TIME.

WHY DID THE POLICE OFFICERS WHO BROUGHT MR. STANSBURY TO THE STATION GO TO A DIFFERENT POINT THAN MR. JOHNSTON?

NUMBER ONE, THEY ESTABLISHED THERE WAS NO COMMUNICATION BETWEEN THE TWO OF THEM. THERE WAS NO SUBSTITUTION AS TO WHERE TO GO.

NUMBER TWO, THE BALDWIN PARK OFFICERS INDICATED THEY WERE NOT FAMILIAR WITH THE POMONA AREA.

THAT THEY'RE GOING TO A STATION AT 11 O'CLOCK AT NIGHT, [2360] ONE THAT THEY DON'T KNOW OF.

THEY GO TO THE ONLY PLACE THEY KNOW IS DEFINITELY GOING TO BE OPEN, AND THEY KNOW ACCESS WILL ALWAYS BE MADE. THAT IS, THE SALLY PORT AREA IS ALWAYS OPEN AROUND THE CLOCK AT ANY STATION HOUSE.

THEY MAKE ENTRY AND TAKE HIM IN THERE.

HE IS NOT IN ANY WAY FINGERPRINTED, PHOTOGRAPHED, ANY NORMAL BOOKING PROCEDURE. NOTHING OF THAT NATURE IS ATTEMPTED.

HE'S BROUGHT INTO AN INTERVIEW ROOM WHICH HAS A TABLE AND CHAIRS AND GIVEN AN OPPORTUNITY TO SIT DOWN THERE AND WAIT.

HE'S ASKED, HIMSELF, IF HE WISHES TO COME.

THE OFFICERS INDICATE IF MR. STANSBURY AT ANY TIME INDICATED THAT HE DIDN'T WISH TO COME, THEY SIMPLY WOULD HAVE NOT TAKEN HIM, BUT BACKED OFF AT THAT PERIOD OF TIME.

NO EVIDENCE TO SUGGEST HE WAS IN FACT IN CUSTODY NOR A PRIME SUSPECT SIMPLY BY THE MANNER IN WHICH THE INTERVIEW WAS CONDUCTED.

HOW ABOUT WHO CONDUCTED THE INTERVIEW?

WE HAVE TWO TRAINED HOMICIDE OFFICERS INVESTIGATING THE CASE, TALKING TO THE BLACK MAN UPSTAIRS.

ONE HOMICIDE OFFICER COMES DOWN TOGETHER WITH A ROOKIE INVESTIGATOR TO SIT DOWN AND TALK TO MR. STANSBURY.

NOT THE TYPE OF INTERVIEW TEAM THAT ONE WOULD SUSPECT IF IN FACT HE WAS A SUSPECT.

[2361] THIS IS FURTHER BORNE OUT BY THE FACT LATER ON WHEN MR. STANSBURY DID BECOME A SUSPECT.

ALL QUESTIONING WAS STOPPED. THE INTERVIEW TEAM PRESENTLY THERE GOT UP AND LEFT.

THEN THEY BROUGHT DOWN THE THREE HOMICIDE INVESTIGATORS WHO THEN COMMENCED WHAT WOULD BE A STANDRARD INVESTIGATION OR INTERROGATION, IF YOU WILL, OF SOMEONE WHO WAS A SUSPECT.

AND MIRANDA RIGHTS WERE GIVEN AT THAT POINT IN TIME.

[2362] CLEARLY THE CHANGE IN PROCEDURES AGAIN IS INDICATIVE OF WHAT IN FACT WAS TRULY TAKING PLACE AT THAT POINT IN TIME.

THE COURT: LET ME ASK A QUESTION.

WHAT POINT IN THE SERIES OF CONVERSATIONS WITH MR. STANSBURY WOULD YOU ASSUME THAT THE FOCUS OF THE INVESTIGATIONS BEGAN TO KEY ONTO HIM, THE FOCUS?

MR. BURNS: I THINK CLEARLY FROM THE TESTIMONY OF THE OFFICER, HE BEGAN USING THE QUESTION PHRASE, HE BEGAN TO BECOME SUSPICIOUS OF MR. STANSBURY ONLY AFTER MR. STANSBURY MADE A DESCRIPTION OF A CAR THAT HE WAS DRIVING THAT NIGHT WHICH MATCHED WITH A DESCRIPTION OF A CAR FROM WHOM THE BODY WAS BELIEVED TO HAVE BEEN DUMPED AND THEN ALL OF THE THINGS KIND OF FELL IN PLACE.

THAT OFFICER AT THAT POINT IN TIME THEN SWITCHED AND ASKED HIM A QUESTION CONCERNING MR. STANSBURY'S BACKGROUND.

AND WHEN THE - I DON'T KNOW FOUR OR FIVE PRIOR CONVICTIONS FOR CHILD MOLEST AND RAPE AND THINGS OF THAT NATURE CAME ABOUT, CLEARLY AT THAT POINT IN TIME, WHEN THE OFFICER WAS CONFRONTED WITH THAT INFORMATION, ONE WOULD HAVE TO CLEARLY INDICATE MR. STANSBURY WAS THE PRIMARY FOCUS OF THE INVESTIGATION.

AS TO WHEN HE - YOU KNOW, WHEN THE FOCUS WAS ACTUALLY THERE, CLEARLY IT WAS AFTER MR. STANSBURY ANSWERED THE QUESTION CONCERNING HIS PRIOR BACKGROUND.

AND CLEARLY IT WAS STARTING TO FOCUS IN. I MEAN ONE BECAME SUSPICIOUS AFTER HE ANSWERED THE QUESTION [2363] AND AFTER HE DESCRIBED THE VEHICLE THAT HE WAS OPERATING ON THE NIGHT IN QUESTION.

SO I THINK THAT WOULD BE THE TIME FRAME THAT WE'RE DEALING WITH AT THIS POINT IN TIME.

I'D INDICATE TO THE COURT THAT THE DEFENSE SPECIFICALLY MENTIONED TWO STATEMENTS MADE BY MR. STANSBURY. ONE, AN OFFER TO TAKE A LIE DETECTOR TEST AND SO FORTH.

I WOULD AGREE WITH DEFENSE COUNSEL. CLEARLY THAT AREA IS SOMETHING THAT IS NOT ADMISSIBLE FROM AT LEAST TWO GROUNDS.

NUMBER ONE, THERE HAD IN FACT BEEN A MIRANDA IMPLICATION PRIOR TO THAT QUESTION BEING ASKED, AND OF COURSE, STANDARD POLICY IN THE PENAL CODE SECTION PREVENTS ANY INQUIRY INTO THAT TYPE OF MATERIAL AND INFORMATION.

IN ADDITION, I WOULD CONCEDE FOR THE PURPOSE OF THIS HEARING THAT THE FOCUS HAD FORMED ON HIM WHETHER THE OFFICER ASKED THE QUESTION, DO YOU HAVE ANY PRIOR RECORD.

AND SO HIS RESPONSE TO THAT QUESTION MAY BE ONE THAT THIS COURT WOULD FEEL WOULD BE INAPPROPRIATE AND MAY IN FACT HAD BEEN SOMETHING THAT SHOULD HAVE BEEN DONE OR QUESTION ASKED ONLY AFTER THE GIVING AND WAIVING OF MIRANDA RIGHTS. I HAVE NO PROBLEM WITH THAT. CLEARLY ALL QUESTIONS AND REPONSES UP UNTIL THAT QUESTION I THINK ARE CLEARLY ADMISSIBLE UNDER THE LAW.

AND THE ONLY ONE LAST POINT THAT I WOULD RAISE OR RESPOND TO DEFENSE COUNSEL'S ARGUMENT WAS THAT A [2364] REASONABLE PERSON LIKE MR. STANSBURY, WOULD HAVE THOUGHT THAT HE WAS IN CUSTODY.

CLEARLY FROM THE RECORD, THERE WAS NO INDICATION FROM ANY OF THE OFFICERS WHO HAD CONTACT WITH MR. STANSBURY, THAT HE WAS AT ALL RELUCTANT TO COME DOWN NOR WAS THERE ANY INDICATION THAT MR. STANSBURY AT ANYTIME INDICATED THAT HE DID NOT WISH TO BE THERE, THAT HE WISHED TO TALK TO ANY ONE, THAT HE WISHED TO DO ANYTHING TO DELAY WHAT WAS THEN THE ONGOING INTERVIEW PROCESS.

SO THERE WAS NOTHING OBJECTIVELY DONE OR SAID BY MR. STANSBURY TO SUGGEST THAT HE WAS UNCOMFORTABLE WITH WHAT WAS TAKING PLACE OR HE DID NOT WISH TO COOPERATE AT THAT POINT IN TIME.

CLEARLY, IN ADDITION, MR. STANSBURY HIMSELF HAS NOT TESTIFIED IN THIS CASE. IF HE

THOUGHT THAT HE WAS A SUSPECT, CERTAINLY HE COULD HAVE TAKEN THE STAND AND GIVEN US THE BENEFIT OF HIS THOUGHTS AS TO WHEN HE FELT THAT HE WAS IN CUSTODY.

AND THERE WAS NO SUCH EVEN ATTEMPT TO MAKE THAT OFFER.

IN ADDITION, THE MANNER IN WHICH HE WAS HANDLED, THE LACK OF HANDCUFFING, THE MANNER IN WHICH HE WAS OFFERED HIS OWN TRANSPORTATION, THE POSITION IN THE CAR THAT HE ENJOYED WHEN HE WAS GIVEN A RIDE DOWN TO THE POMONA POLICE STATION, THE FACT THAT HE WAS NOT IN ANY WAY BOOKED OR ANY OF THE BOOKING PROCESS STARTED WHEN HE FIRST WENT DOWN THERE, ARE ALL OBJECTIVE INDICIA OF THE FACT THAT HE WAS IN FACT NOT IN CUSTODY AND NOT A SUSPECT.

[2365] CERTAINLY TO ANYONE WHO WAS A REASONABLE PERSON THAT WOULD BE TRUE AS TO MR. STANSBURY AND HIS PECULIAR SETTING, THE FACT THAT HE HAS HAD, I USE THIS WORD ADVISEDLY, THE BENEFIT OF EXTENSIVE CONTACT WITH LAW ENFORCEMENT AGENCIES AND EXTENSIVE TIME SPENT IN CUSTODY AND BEEN ARRESTED, CERTAINLY CONVICTED NUMEROUS TIMES IN THE PAST, HE'S CERTAINLY GONE THROUGH AN ARREST PROCEDURE AND KNOWS WHAT IT MEANS TO BE IN CUSTODY AND NONE OF THOSE THINGS HAVE TAKEN PLACE UP UNTIL THAT POINT IN TIME.

SO EVEN FROM MR. STANSBURY'S OWN BACKGROUND, THERE WAS CERTAINLY NOTHING TO

SUSPECT OR THAT SUGGESTS HE WAS IN CUSTODY NOR THAT HE WOULD HAVE REASON TO FEEL HE WAS IN CUSTODY.

I WOULD INDICATE TO THE COURT THAT ALL THE STATEMENTS ARE CLEARLY ADMISSIBLE UP UNTIL THE QUESTION BY FROM JOHNSTON CONCERNING, DO YOU HAVE ANY PRIOR RECORD AND THEN THE COURT MAY RULE THAT ANY STATEMENTS AFTER THAT MAY HAVE BEEN IN FACT IN VIOLATION OF MIRANDA AND THAT WOULD BE THE PEOPLE'S POSITION.

THE COURT: MR. DAUGHERTY.

MR. DAUGHERTY: WE'LL SUBMIT IT, YOUR HONOR.

I DON'T THINK IT'S NECESSARY EITHER TO - I'M NOT GOING TO REITERATE THE POINTS AND AUTHORITIES. I ASSUME THE COURT HAS READ THEM ALL.

THE COURT: I HAVE READ THEM AND LISTENED TO TESTIMONY.

MR. DAUGHERTY: I'M ALSO AT THIS POINT IN TIME HANDING A NOTE. IT'S A NOTE FROM MR. STANSBURY TO MR. [2366] BURNS AT THIS POINT.

MR. BURNS: MAY I HAVE A MOMENT, YOUR HONOR?

THE COURT: YES, YOU MAY.

MR. BURNS: YOUR HONOR, I HAVE READ A NOTE; THAT IT APPEARS MR. STANSBURY HAS A

QUESTION ABOUT THE ACCURACY OF A TRANSCRIPT.

I HAVE NOT HAD A CHANCE TO LOOK INTO THESE MATTERS. PERHAPS I CAN ADDRESS THEM AFTER LUNCH.

THE COURT: I'M SORRY.

MR. BURNS: THE NOTE HAS NOTHING TO DO WITH THE HEARING WHICH WE ARE - I'M SORRY, WITH THE ARGUMENT PRESENTLY BEFORE THE COURT.

THE COURT: DO THEY REFER TO THE ACCURACY OF A TRANSCRIPT OF THE TESTIMONY IN THIS MOTION?

MR. BURNS: THEY MAY WELL, YOUR HONOR. IT REFERS TO - I'LL JUST READ THE NOTE FOR THE RECORD.

MR. DAUGHERTY: I THINK IT WOULD NOT AFFECT THE RULING OR THE ACCURACY. THE QUESTION I BELIEVE IS SIMPLY WHETHER OR NOT THE Q FOR QUESTION OR THE A FOR ANSWER IS IN THE RIGHT PLACE. PERHAPS THEY GOT TRANSPOSED.

MR. BURNS: YOUR HONOR, I BELIEVE THERE'S AN INDICATION THAT ON VOLUME 32, WHICH WAS OCTOBER 31ST, THAT ON PAGE 2181, MR. STANSBURY QUESTIONS THE CURRENT READING OF THE RECORD. AND LET ME SEE IF I CAN FIND MY VOLUME 32.

BASICALLY INDICATES THAT HE BELIEVES LINE 18 WHICH READS ANSWER SHOULD READ QUESTION. AND LINE 21 THAT READS QUESTION SHOULD READ ANSWER; LINE 22 THAT READS ANSWER SHOULD READ QUESTION; AND LINE 23 THAT READS [2367] QUESTION SHOULD READ ANSWER.

IF I MAY HAVE JUST A MOMENT TO READ THIS.

THE COURT: IT APPEARS AS IF ON LINE 26 IT SEEMS TO CORRECT ITSELF. IT WAS CORRECTED.

MR. BURNS: YES.

I WOULD AGREE WITH MR. STANSBURY. HE IS CORRECT. AND WOULD INDICATE TO THE COURT THAT THE OFFICIAL RECORD SHOULD BE MODIFIED TO REFLECT THE APPROPRIATE CHANGES THAT HAVE BEEN POINTED OUT.

THE CLERK: LINE 18, LINE 21 AND WHAT OTHER LINE?

THE COURT: LINE 18 SHOULD BE A Q INSTEAD OF AN A; LINE 21 SHOULD BE AN A INSTEAD OF A Q; LINE 22 SHOULD BE A Q INSTEAD OF AN A; AND LINE 23 SHOULD BE AN A INSTEAD OF A Q, AS I SEE IT.

MR. BURNS: THAT'S CORRECT, YOUR HONOR.

I WOULD JOIN IN THAT.

THE CLERK: WHAT WAS THE PAGE?

THE COURT: 2181.

I WOULD AGREE WITH BOTH MR. DAUGHERTY AND MR. BURNS' ANALYSIS AS TO THOSE QUESTIONS AND STATEMENTS ABOUT PAST RECORD AND CERTAINLY ABOUT THE PARAGRAPH.

I BELIEVE THAT MY RULING WOULD BE THAT THE MIRANDA QUESTION AS TO WHETHER ANY STATEMENTS SHOULD BE EXCLUDED FROM TESTIMONY BEING LIMITED TO THOSE TWO STATEMENTS OR QUESTIONS OR ANSWERS FROM THOSE QUESTIONS REGARDING PAST RECORD OF THE POLYGRAPH, I'M SATISFIED FROM LIEUTENANT JOHNSTON'S TESTIMONY THAT AT THE TIME THAT MR. STANSBURY WAS BROUGHT INTO THE STATION AND THAT HE HAD [2368] DIRECTED OTHER OFFICERS TO BRING MR. STANSBURY TO THE STATION, THAT THE FOCUS IN HIS MIND CERTAINLY WAS ON THE OTHER ICE CREAM DRIVER.

HE WAS BLACK AND HIS NAME ESCAPES ME AT THE MOMENT.

MR. BURNS: YUSUF.

THE COURT: AND I THINK IN HIS MIND, THE FACT THAT THEY WENT TO THE HOME - AS I RECALL THE TESTIMONY, THEY WENT TO THE HOUSE AND HAD TO FIND HIM UNDER THE BED.

UNDER THE BED AND IN EFFECT HE WAS HIDING. THAT IN TERMS OF THE TWO INDIVIDUALS IN THE STATION, THAT THE FOCUS I BELIEVE AT THE TIME THAT THE INTERVIEW STARTED WAS DEFINITELY ON YUSUF, PRIMARILY BECAUSE OF THE INFORMATION FROM THE LITTLE BOY INDICATING

THAT ROBYN HAD LEFT THE HOUSE AFTER DINNER TO MEET A BLACK ICE CREAM DRIVER.

AND BASED ON THE AUTHORITIES THAT HAVE BEEN CITED IN THE BRIEFS, I DON'T BELIEVE THAT THE LINE WAS CROSSED. GIVEN THE NATURE OF THE EXAMINATION AND COMMENTS BY MR. STANSBURY, MUCH OF WHAT WHICH WAS IN THE NARRATIVE, UNTIL THE QUESTION CAME IN ABOUT - THE QUESTIONS BEGAN TO KEY ON THE AUTOMOBILE.

AND THEN AFTER MR. STANSBURY MADE THE COMMENT ABOUT DESCRIBING THE TURQUOISE AUTOMOBILE, TURQUOISE-COLORED AUTOMOBILE, THAT'S WHEN THE FOCUS SHIFTED TO MR. STANSBURY.

AND ALL AFTER THAT STATEMENT, STARTING WITH HIS PAST RECORD WILL BE EXCLUDED.

[2369] MR. BURNS: THANK YOU, YOUR HONOR.

THE COURT: MOTION WILL BE GRANTED AS TO ANY QUESTIONS AFTER THAT STATEMENT.

NOW, THERE'S ONE OTHER - I WANT TO REFER BACK TO A MOTION BEFORE, A QUESTION ABOUT SANCTIONS AS TO THE THERMOMETER, THE FREEZER AND THE GASOLINE SLIPS.

I'VE ALREADY RULED AS TO MY EVALUATION, MY VIEW OF THE EVIDENCE. BUT I WOULD SAY THAT DURING THE COURSE OF THE TRIAL, THE QUESTION OF WHETHER OR NOT, THE MANNER IN WHICH THE EVIDENCE WAS HANDLED AND WHETHER OR NOT AN INSTRUCTION SHOULD BE

GIVEN TO THE JURY AS TO THE MANNER IN WHICH THAT EVIDENCE WAS HANDLED SO THAT THE JURY MAY DECIDE WHETHER OR NOT THAT IS A - SOMETHING THEY SHOULD CONSIDER IN TERMS OF THE EVIDENCE.

I DON'T MEAN WHEN I INDICATE THAT THERE SHOULD BE NO SANCTIONS; THAT IN FACT THERE MAY NOT AT SOME POINT BE AN INSTRUCTION BASED ON THE TESTIMONY. AND I HAVEN'T FORECLOSED - I DON'T MEAN TO FORECLOSE IT BY INDICATING THAT.

MR. DAUGHERTY: I UNDERSTAND.

MR. BURNS: I UNDERSTOOD THE COURT'S RULING AS SUCH.

THAT'S FINE.

THE COURT: I HADN'T SAID IT. SO I THOUGHT I'D CLARIFY IT.

* * *

WHAT'S NEXT?

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

Date: NOVEMBER 5, 1984
HONORABLE: JAMES H. PLATT JUDGE
T SMITH Deputy Sheriff
J MARKS Deputy Clerk
L PRUDHOMME/N COPPER Reporter

A 529247 (Parties and counsel checked if present)

PEOPLE OF THE STATE OF CALIFORNIA

VS

OI STANSBURY, ROBERT EDWARD
187 1 ct 288.B 1 ct 261.2 1 ct 207 1 ct

Counsel for People:

DPUTY DISTRICT ATTY: R. BURNS

Counsel for Defendant: D. DAUGHERTY
A. ROBUSTO

NATURE OF PROCEEDINGS Pre-Trial Motions
Remanded 11-23-82

Defendant's motion to exclude certain testimony due to a Miranda issue, continued from November 1, 1984, is resumed with defendant and all counsel present as heretofore.

Gary Elofson is sworn and testifies for defendant. Defendant rests as to this motion. The Court rules that all statements made by defendant after he was questioned as to his prior record shall be excluded.

The Court orders that the transcript of these proceedings, Volume 32, page 2181, line 18 shall be amended by deleting "A" and substituting "Q"; on line 21 deleting "Q" and substituting "A"; on line 22, deleting "Q" and substituting "A"; and on line 23 deleting "A" and substituting "Q".

The Court clarifies its ruling on 10-30-84 in which it denied sanctions due to the unavailability of evidence. The Court now states that this would not preclude any instructions which might be given to the jury.

Defendant has two motions relating to the pre-trial identification by Beverly Allen: (1) the fairness of the procedure, and (2) whether or not an attorney was present when the photographs were shown to her. The People state that no counsel was present when she was shown the mug show-up folder.

Defendant elects to take charge of this motion himself. Co-counsel Daugherty requests a Marsden hearing out of the presence of the District Attorney and with the courtroom cleared.

WITH THE COURTROOM CLEARED: Co-counsel Daugherty expresses his concern about defendant's examining Beverly Allen himself because of the danger of his revealing evidence acquired by the defense team prior to trial.

WITH ALL PARTIES PRESENT: The Court raises the question about the authority to retain/ advisory counsel

Robusto in addition to having co-counsel Daugherty if defendant continues in pro per at the time of trial.

Page 1 of 2

MINUTE ORDER

MINUTES ENTERED

11-5-84

COUNTY CLERK

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

THE PEOPLE,)	
Plaintiff and Respondent,)	
v.	)	S004697
ROBERT EDWARD STANSBURY,	)	Super.Ct.
Defendant and Appellant.	)	No. A529247
_____)	

BY THE COURT:

Defendant Robert Edward Stansbury was convicted by jury of the first degree murder (Pen. Code, § 187)¹ of Robyn Jackson; lewd act on a child under the age of 14 (§ 288, (b)); rape (§ 261, (2)); and kidnapping (§ 207). The jury found true three special circumstance allegations: murder in the commission of a kidnapping (§ 190.2, subd. (a)(17)(ii); murder in the commission of rape (§ 190.2 (17)(iii)); and murder in the commission of a lewd act on a child (§ 190.2 (17)(v)). The jury also found true allegations that defendant had inflicted great bodily injury in connection with the noncapital offenses (§§ 1203.075, 12022.7, 12022.8) and that defendant committed the offenses while on parole (§§ 1203.085, (a), 3000).

The jury fixed the penalty at death. This appeal is automatic. We conclude that we should affirm the judgment in its entirety.

¹ All further statutory references are to the Penal Code unless otherwise noted.

= SEE CONCURRING AND DISSENTING OPINIONS =

I. FACTS

A. Guilt Phase

1. Prosecution Case

On September 28, 1982, defendant, a tall red-headed man with a beard, drove an ice cream truck on a sales route around the Baldwin Park neighborhood of Los Angeles. He accidentally drove the truck into a fence around 5 p.m. and he cooperated with the property owner in trying to fix the fence. The owner observed nothing wrong with defendant's truck; it appeared to operate normally. Defendant left the scene between 5:30 and 5:45 p.m. A competing ice cream truck driver also saw defendant in the neighborhood that afternoon, and again, his truck appeared to be functioning well and traveling at speed.

Robyn went to the Geddes School in Baldwin Park around 6 p.m. that evening. A neighbor saw a white ice cream truck near the school about that time, and the neighbor's son saw Robyn talking to the ice cream truck driver in front of the school. The boy looked away, and when he looked back, Robyn was not to be seen and the truck was making a U-turn and driving away. He identified the driver as a man with red hair and a beard. The child said that Robyn often talked to the ice cream truck driver and, unlike any of the other neighborhood children, received gifts of candy and ice cream from him. He identified a picture of defendant as he looked with long hair and a beard as the driver of the ice cream truck Robyn frequented.

Beverly Allen, a gas station attendant, saw a large white ice cream truck arrive at her station about 6:30 p.m. on September 28, 1982. Her Sears U.S.A. gas station was located in Covina, and she saw the truck arrive from the east on Arrow Highway. She saw a young man (not defendant) with blond hair buy gas and ask someone in the truck to be dropped off by the freeway. Mrs. Allen saw defendant standing by the passenger door of the truck, and observed Robyn inside, looking unhappy. Mrs. Allen was somewhat uncertain about her identification of defendant.

Defendant did not return to his home in Pomona until 9 p.m. that evening. He borrowed his roommate's turquoise automobile around midnight, first driving it next to his truck for a few minutes. He returned around 3 a.m.

About 1:15 a.m. Andrew Zimmerman saw the turquoise car in Pasadena. He saw a large person get out of the car, the door of which made a memorable popping sound, and throw something in a flood control channel. Mr. Zimmerman telephoned the police, who arrived about 1:30 to discover the body of Robyn in the flood control channel. Mr. Zimmerman positively identified defendant's roommate's car as the one he had seen that night.

There was medical evidence that before her death, Robyn had been put in a cold, oxygen-deprived environment, such as an ice cream freezer. There was evidence of a rape, and there was evidence of saliva deposited by a nonsecretor on the victim's genital area and nipple. The victim was a secretor; defendant, like only 20 percent of the population, was not. The cause of death was asphyxia

complicated by blunt force trauma to the head. The coroner was of the opinion that Robyn died when her head struck the concrete floor of the flood control channel.

Defendant spoke to the police on the night after the crime, and said he had seen Robyn the day before about 6 p.m. He said he left her about that time, and continued his route. He said his truck had not been operating properly, and he had been compelled to take a circuitous route home via the Arrow Highway, to avoid hills. He said he stopped for gas at an off-brand station on the Arrow Highway. He explained that he spent the evening watching television and dozing, and that when he woke around midnight, he borrowed his roommate's car to go get something to eat at the Sambo's restaurant on Indian Hill Boulevard in Claremont. A waitress who worked at that restaurant and was familiar with defendant testified that he had not been there that night.

A Los Angeles County jail inmate testified that defendant told him he had offered a little girl some ice cream or candy to get her to go around and sell his wares with him. Defendant said he was being charged with the murder of this little girl.

2. Defense Case

Defendant testified in his own behalf. He confirmed that he had been in the Baldwin Park neighborhood on September 28, 1982. His ice cream truck developed engine trouble in midafternoon. He saw Robyn around 6:15, when she asked him for candy. He often gave free candy or ice cream to poor children. He left her by the Geddes

School, and continued on his route, making a few more sales. Then he headed home, traveling between five and seven miles per hour. He did not go home via Arrow Highway, as he admitted he had previously told the police, but by another route. He bought gas at a Shell station on Azusa Avenue, not at Beverly Allen's Sears U.S.A. station. It was stipulated that a receipt for gas bought at this Shell station on that date was found in his ice cream truck.

Defendant testified that he returned home around 9 p.m., and when his roommate awoke him around midnight, asked to borrow the roommate's car. He pulled the car out, stopped near his truck for cigarettes, then went to the Sambo's restaurant on Central Avenue in Chino. He denied telling the police he had gone to the Sambo's on Indian Hill. He stopped at a gas station to buy gas for the next day, when he planned to ask for the loan of the car again. At the gas station, a woman approached him and asked for a ride, which he provided. This woman testified, confirming that she received a ride from defendant about 1:50 a.m.

There was some evidence that it would have been difficult to pump gas into defendant's truck from the position in which Mrs. Allen observed it. There was also evidence that the lighting conditions at the place Mr. Zimmerman observed the turquoise car would tend to distort colors. A defense medical expert was of the opinion that the victim had died before she was thrown into the channel, between 7:30 and 8:30 p.m., and that the cause of death was strangulation. He said there was no evidence that the child had been in a cold, oxygen-deprived environment before her death.

There was no physical evidence of the victim's presence in defendant's truck. There was also no physical evidence of defendant's presence in the truck, which was extremely dirty.

B. Penalty Phase Evidence

The prosecutor presented evidence that when defendant was 20 years old, he violently assaulted and sexually abused 2 boys, then ages 10 and 9. He threatened to kill the children, and forced one to dig a grave. Defendant was convicted of lewd conduct with a child for these activities. Another witness described defendant's crimes against her; he offered to help her after she experienced car trouble, but instead beat her, raped her, and took her valuables. He held a knife to her back and spoke of disposing of her body. He was convicted of rape, robbery and kidnapping.

Both witnesses spoke of their humiliation, rage and fear after these traumatic events.

Evidence was also presented of defendant's convictions for the armed rape of a 14-year-old girl, for a later offense of kidnap and rape of an adult woman, and for possession of a firearm by an ex-felon.

Defendant's parole officer testified that defendant told him he was unemployed. The officer testified that he would not have permitted defendant to be employed as an ice cream truck driver in light of his history of violent sexual offenses against children.

Defendant presented no evidence and did not argue to the jury.

II. GUILT ISSUES

A. Faretta Claims

1. Alleged Interference With Defendant's Right of Self-representation

Defendant claims that the court so interfered with his Sixth Amendment right under *Faretta v. California* (1975) 422 U.S. 806 (hereafter *Faretta*) to represent himself, that the entire judgment must be reversed. We disagree.

Jury selection began on January 7, 1985. The issue of who would represent defendant and under what terms, however, had occupied a significant part of the pretrial proceedings.

From the date of the arraignment on November 23, 1982, until a conflict of interest was declared on July 7, 1983, defendant was represented by the public defender. On the latter date the court relieved the public defender and appointed Attorney David J. Daugherty to represent defendant. On September 12, 1983, the court granted defendant pro se privileges in county jail, but otherwise continued his representation by Daugherty. On May 7, 1984, the court appointed Attorney Anthony R. Robusto as cocounsel with Daugherty.

Defendant subsequently filed a motion to represent himself pursuant to *Faretta*, supra, 422 U.S. 806. At an in camera hearing on July 31, 1984, after lengthy discussions of the matter with defendant, the court offered him four options. First, the court offered defendant "pure" *Faretta* status, i.e., he would be allowed to represent himself without the assistance of any lawyer. Second, the court

offered to allow defendant to represent himself with the assistance of both Daugherty and Robusto as "advisory counsel." The court explained that advisory counsel would not be permitted to participate directly in the trial as advocates, but that defendant could confer with them at any time during the proceedings on questions of law or tactics, e.g., how to question certain witnesses and what motions to make. Third, the court offered to allow the defendant to represent himself with one of his two lawyers as his "cocounsel." As authority for the offer, the court drew an analogy to its statutory power to appoint a cocounsel for a capital defendant's appointed counsel – here, defendant representing himself – if the case warrants it. (§ 987, subd. (d).) The court explained that in contrast to "advisory counsel," cocounsel would have the right to participate directly in the trial, e.g., by examining witnesses or addressing the court or jury. Fourth, the court offered to continue matters as they were, i.e., with defendant as the client and Daugherty and Robusto as his lawyers.

Seeking clarification of the third option, defendant asked whether he would be allowed to act as chief or lead counsel if his lawyer was appointed as his cocounsel. The court replied that he would. Defendant then asked if such status as chief counsel would give him "the right to make any final decisions in the matter . . . regardless of how foolish they may be." The court said that it would. The court explained, however, that if defendant and his lawyer became cocounsel, they would be required during the trial to elect which of them would conduct the examination of any given witness or make any given motion;

either, but not both, would be allowed to do so in each instance.

With these understandings defendant chose the third option, i.e., to become cocounsel with Daugherty but to act as lead counsel of the team. The court specifically found that defendant knowingly and intelligently waived his right to be represented by counsel – indeed, by two counsel – and elected to substitute himself as one of those counsel, and to proceed with Daugherty as his cocounsel and himself as his chief counsel. The court then formally granted defendant's motion to proceed in *propria persona* and appointed Daugherty as his cocounsel. Finally, the court directed Robusto to serve as advisory counsel.

During the ensuing three months the court held numerous pretrial hearings on motions made either by defendant or by Daugherty. On the basis of that experience the court became concerned about an apparently growing conflict between defendant and Daugherty over the substance and strategy of the defense. The court expressed doubts that the arrangement – i.e., with defendant and Daugherty acting as cocounsel – would be workable when the proceedings reached the trial stage; the court also doubted that defendant's right to represent himself included a constitutional right to a full-fledged cocounsel as well as an advisory counsel. At an *in camera* hearing on November 7, 1984, after further lengthy discussions of the matter with defendant, the court reaffirmed defendant's *pro se* status and relieved Daugherty as his cocounsel. At defendant's insistence, however, the court immediately reappointed Daugherty as "assistant counsel" for defendant. The court explained that defendant would thereafter have the power to "make all the

decisions" concerning the conduct of the defense, and that Daugherty as assistant counsel rather than cocounsel would no longer have any such power. But the court also stated that if defendant asked Daugherty to do so, the court would permit Daugherty to actively participate in all stages of the trial, e.g., by conducting *voir dire*, examining witnesses, or making arguments to the jury; the sole restriction was that, as before, any given examination could be conducted either by defendant or by Daugherty but not by both.² The new arrangement remained in force throughout the rest of the pretrial proceedings and the trial.³

Defendant first contends that although the court granted his *Faretta* motion, it thereafter conducted the proceedings in such a way as to deprive him of effective control over his defense and make his *Faretta* right an empty formality.⁴ The record refutes this claim. As noted above, when the court authorized defendant to act as chief counsel with Daugherty as his cocounsel, and again when the court recognized defendant as sole counsel with

² The court also relieved Robusto as "advisory counsel," except that defendant could call on him to present any matter that he had specially prepared. Defendant did so several times in the course of trial.

³ Jury selection began on January 7, 1985, and the trial ended on July 15, 1985.

⁴ Defendant limits this claim to the pretrial proceedings and the guilt phase. As will appear, he takes the opposite position in attacking the penalty portion of the judgment, contending that in the penalty phase the court should have intervened in his case and even terminated his *pro se* status on its own motion.

Daugherty as his assistant, the court made it clear that it was defendant who was actually in charge of the conduct of the defense. On both occasions Daugherty expressly accepted his appointment with that understanding. At numerous points thereafter the court reaffirmed defendant's sole right to control the content and presentation of the defense, Daugherty acknowledged that defendant had that right, and both the court and Daugherty observed that defendant was in fact exercising that right. More important, the record confirms their observations.

To begin with, it plainly appears that at all stages of the proceedings defendant personally and actively participated in the conduct of his defense. Almost a year before granting defendant's *Faretta* motion, the court ordered that he be given pro se privileges in county jail. Thereafter – even though defendant was still represented by counsel – the court allowed defendant to file a number of pretrial motions in propria persona, and ruled favorably to him on certain of those motions. After the court granted defendant's *Faretta* motion and at his request appointed Daugherty first as his cocounsel and then as his assistant counsel, the court entertained an even larger number of pretrial motions personally presented by defendant.⁵

At the hearings on the principal pretrial motions defendant himself conducted the examination of 21 witnesses. Defendant personally selected, interviewed, and

⁵ For example, on September 27 and October 4, 1984, the court either considered or ruled on a total of more than 30 motions filed by defendant in propria persona.

retained the two law clerks on the defense team.⁶ When the case came on for trial it was defendant who prepared the jury questionnaire. During voir dire defendant personally examined a number of the prospective jurors. Defendant then made his own opening statement to the jury. Throughout the trial defendant continued to make and argue numerous additional pro se motions, including several motions to declare a mistrial and to dismiss. During the prosecution's case-in-chief defendant personally cross-examined seven witnesses, including the key prosecution witness Beverly Allen. During the defense case defendant presented and examined 21 witnesses on his behalf. Defendant then made his own closing argument to the jury. And defendant himself examined additional witnesses both in the penalty phase and at the hearings on posttrial motions.

The record also demonstrates the other half of the equation, i.e., that even after the court granted his *Faretta* motion it allowed defendant to use Daugherty's services in any way he saw fit. In particular, the court let defendant call on Daugherty to act as his counsel at every stage of the proceedings. Thus, Daugherty made and argued a number of pretrial motions for the defense. At the hearings on the principal pretrial motions Daugherty was permitted to conduct the examination of 18 witnesses. Daugherty was allowed to examine the bulk of the prospective jurors on voir dire, as well as the jury-selection experts called by the defense. Like defendant, at trial

⁶ The defense team was thus composed of defendant acting as his own attorney, together with two additional attorneys, two investigators, two law clerks, and various experts.

Daugherty also made opening and closing statements to the jury. Finally, Daugherty was permitted to examine a number of the defense witnesses and to cross-examine the majority of the witnesses in the prosecution's case-in-chief and all the witnesses in the prosecution's rebuttal. In each of the foregoing instances Daugherty's participation in the proceedings was apparently at defendant's request or with his consent. Indeed, in his closing brief in this court defendant expressly denies making any claim that "unsolicited and excessively intrusive participation" by his assistant counsel (*McKaskle v. Wiggins* (1984) 465 U.S. 168, 177 [hereafter *McKaskle*]) impaired his right of self-representation.

Instead, defendant contends that right was impaired by actions of the trial court that "usurped defendant's control of defense tactics and strategy." He charges numerous instances of such "usurpation." We have reviewed them all, and find that most are misreadings or exaggerations of the record and the remainder refer to rulings well within the trial court's discretion. Defendant focuses on two main categories of asserted judicial interference with his defense, and we shall discuss those categories in some detail.

Defendant contends that in a number of instances the court "resolved conflicts" between him and Daugherty in favor of the latter. He cites several examples, but none supports his claim. To begin with, in none of these instances did defendant object on the ground he now asserts. And in any event the record is not as defendant portrays it. He claims, for example, that the court repeatedly "accepted Daugherty's representations" that he had furnished defendant with copies of documents that he

needed for the defense despite defendant's statement to the contrary. But this was a factual, not a tactical, disagreement. In *McKaskle, supra*, 465 U.S. at page 179 the Supreme Court declared that *Faretta* rights are adequately vindicated in proceedings outside the jury's presence if, inter alia, "disagreements between counsel and the *pro se* defendant are resolved in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel." (Fn. omitted.) Whether defendant had or had not received copies of certain documents was not a matter of "discretion" but an ordinary question of fact. The record shows that in resolving that question the court did not defer to counsel's personal judgment but simply tried to determine if defendant had actually received copies of all the documents he needed.⁷

⁷ Thus the court asked Daugherty if he had any documents that defendant did not. Daugherty replied that to the best of his knowledge defendant had received copies of all documents in his possession, and that if any other documents turned up he would make sure defendant received them as well. Indeed, Daugherty offered to copy his entire file again for defendant, despite its size and complexity. Seeking a practical solution, the court directed defense investigator Benart to meet with defendant and show him every document in Daugherty's file, to obtain defendant's initials on each document of which he had a copy, and to provide a copy of any that defendant did not have.

Defendant similarly distorts the record in complaining that the court "again deferred to Daugherty's judgment" on the question whether Daugherty had or should have filed certain writ petitions on defendant's behalf. Rather, when the court inquired into the matter Daugherty explained that he had not in fact declined to file such petitions but had simply discussed with defendant the question of the best time to do so, a question that was still unresolved. Daugherty pointed out that the petitions could be filed at any time without prejudice, and offered

Defendant next complains that when Daugherty announced over defendant's objection that the defense was ready to proceed on its motion to suppress under *Miranda v. Arizona* (1966) 384 U.S. 436 (hereafter *Miranda*), the court "compromised defendant's right to control defense tactics" by ordering the hearing to proceed. The record shows, however, that the issue was not in fact one of "tactics" but simply of the timely availability of witnesses. When the court called the *Miranda* motion for hearing, Daugherty stated that the three police witnesses he wished to present were in attendance. Defendant objected on the sole ground that he had specifically requested the presence of several additional police witnesses. The prosecutor explained that the additional witnesses had recently been in the courthouse and stated he would try to secure their attendance at the next day's proceedings. The court replied that whenever additional witnesses were available it would hear their testimony.⁸ Defendant voiced no further objection and the hearing began. On the next day the additional witnesses were produced and defendant personally examined them at length. It follows there was no "compromise" of defendant's right to control the tactics of the defense.

defendant written instructions on how to file them himself if he wished to do so sooner. Defendant apparently had no wish to file them at that time, however, and was making the point merely to bolster his claim of a breakdown in communications between him and Daugherty.

⁸ Far from pressing the defense to put on the motion at that time, the court remarked that "I don't care one way or the other, if you proceed with the motion or not."

Finally, defendant complains that the court "acquiesced in Daugherty's decision" that certain pretrial investigations defendant had requested were "not justified." Again the record is otherwise. When the court asked defendant which investigations had not been done, defendant focused on his request that Daugherty hire experts to conduct a telephonic survey of residents of the portion of Los Angeles County from which the jurors would be drawn in order to determine what percentage of them remembered reading about the murder of Robyn in the local press.⁹ But the court did not merely defer to counsel's judgment in the matter. Instead, Daugherty explained to the court that at the time in question he had been responsible for disbursing court-authorized county funds for paying defense investigators; that he discussed defendant's idea for a telephonic survey with the company that provides such services and learned it would be a major expense, costing up to \$ 20,000; that he was not willing to approve so large an item without specific court authorization; and that the judge to whom the request for authorization was presented declined to grant it. Defendant does not dispute these facts, which fall well short of showing judicial "acquiescence" in a tactical decision by counsel.

In short, defendant points to no instance in which it can be fairly be said that the trial court resolved adversely a conflict between him and his counsel when the

⁹ Defendant proposed to use the results of the survey in the forthcoming jury voir dire, i.e., as a ground for challenging the panel of prospective jurors if the panel answered differently the questions asked in the survey.

matter was "one that would be normally be left to the discretion of counsel." (*McKaskle, supra*, 465 U.S. at p. 179.) On the contrary, the record shows that after the court made defendant solely responsible for the defense and reduced Daugherty's role to that of his assistant, all parties clearly understood and observed their respective rights and duties.¹⁰

Defendant next contends the court substantially impaired his ability to conduct his defense by threatening to revoke his pro se status in a dispute over tactics. He points to two instances in which he assertedly attempted to stand mute but was told by the court that it would deprive him of his pro se status unless he put on a defense. He relies on *People v. Teron* (1979) 23 Cal.3d 103, 115, in which we said that a pro se defendant "bears no duty to present a defense. He has the right to plead

¹⁰ Thus with some six weeks remaining before trial the court reminded Daugherty and Robusto that "each of you who are assisting him must realize that the decisions that are made in this case are his decisions to make." Robusto acknowledged that defendant "has now acquired all control over this particular case." And Daugherty reviewed the history of his relationship with defendant as follows: when he and defendant were cocounsel it "was a very difficult role because we were pulling against each other. I admit I was trying to direct the lawsuit in what I felt was Mr. Stansbury's best interest. And sometimes we had some conflicts.

"But since there's been a clarification that Mr. Stansbury is in propria persona and he is definitely running this case and I am assisting him, I think he would agree there has been cooperation on my part, and I have directed Mr. Slaick [a defense investigator] for instance, that he does not listen to me. He's directly taking orders from Mr. Stansbury. He's employed by Mr. Stansbury. So is Mr. Benart. So am I."

guilty, even against the advice of counsel. [Citation.] A fortiori, having put the state to its proof, he has no obligation to try to rebut it." (See also *People v. McKenzie* (1983) 34 Cal.3d 616, 628 [dictum].)

We have recognized that in some circumstances a defendant representing himself, unlike counsel, may elect to refuse to participate actively in his defense. (*People v. Teron, supra*, 23 Cal.3d 103, 115; *People v. McKenzie, supra*, 34 Cal.3d 616; see also *United States v. Clark* (7th Cir. 1991) 943 F.2d 775, 782; *Savage v. Estelle* (9th Cir. 1990) 924 F.2d 1259, 1464, fn. 10; *United States v. McDowell* (6th Cir. 1987) 814 F.2d 245, 250.) We have also observed, however, that when a defendant's threat to stand mute is not motivated by a sincere desire to take that route, but by a desire to disrupt or manipulate the proceedings, the court does not err in terminating the defendant's pro se status. (See *People v. Clark* (1992) 3 Cal.4th 41, 114- 115.)

A reasonable inference that can be drawn from the record is that defendant never actually intended to stand mute at the guilt trial, and that his intermittent threats to do so were simply attempts to pressure the court into agreeing to his procedural demands, to delay the trial, and to interject error into the proceedings.

We examine the record of the two incidents defendant complains of in some detail.

Just before the commencement of voir dire, defendant directed Daugherty to sit in the audience, complaining that there had been a complete breakdown in communication between them. The court offered to relieve Daugherty, but defendant admitted he needed him. He complained that Daugherty had destroyed his

defense, and concluded he would have no option but to put on no defense, and "allow the District Attorney to select the jury that he wishes to select and at least attempt to remain mute throughout the trial because of the fact that my defense has been destroyed." He explained his hope that he would obtain a reversal on appeal, and be able to put on a better defense at a second trial.

The court proceeded in camera, patiently trying to determine what it was that made defendant think he should present no defense. Defendant made a rambling complaint that Daugherty had failed to file five writs of prohibition that were critical to his case, but whose nature he could not immediately recall. The court stated: "Mr. Stansbury, wait a minute. I hate to interrupt. You've been going 20 minutes and you haven't told me anything. [¶] I want you to get to factual matters. I thing [sic] you're trying to delay the start of this trial. If you have something specific, please state it."

It transpired that defendant wanted writ relief from the court's *in limine* rulings on various evidentiary points and on his request for a continuance. Daugherty had told defendant that the writ petitions did not have to be filed and acted on before the commencement of trial, and defendant apparently did not like this accurate legal advice. Defendant also complained that Daugherty had fired his law clerk; it transpired that the law clerk had taken another job because he was not given enough hours of work on defendant's case. (Daugherty explained to the court that defendant had complete control over all six of his law clerks.)

As the court pressed defendant for details, defendant responded vaguely that he had a "great many disagreements" with Daugherty, and said that because his experience was that the court would not replace Daugherty, it was a waste of his time to try to answer the court's questions specifically. Daugherty stated that defendant's interest in the writ petitions was that they be timed so as to cause a delay of the trial, and that he did not think the complaints about the writs or the law clerks were the real reason for defendant's threat to put on no defense.

The court carefully explained that the pretrial writs were still available to defendant, and stated that it was satisfied by Daugherty's representations about the assistance available to defendant from various law clerks. The court informed defendant that if he wanted Daugherty's help, he would have to allow the man to sit at counsel table. The court also cautioned defendant that he would have to behave properly in front of the jury.

Defendant responded that the issue of his behavior would not come up: "Perhaps the court misunderstood me. [¶] I had no alternative but to allow the court and Mr. Burns [the prosecutor] to go forward and select the jury of Mr. Burns's choice, at which time I would have no alternative but to attempt to remain mute throughout the trial."

The court cautioned defendant that from what it knew of the facts, the People's case could well result in a conviction, and that defendant's failure to participate could seriously limit the issues available on appeal. Daugherty commented that he thought defendant was of

the view that "essentially if he sits back and do[es] nothing, he can create error and have a new trial." Daugherty felt this was a terrible gamble, and asked that defendant be given more time to "ponder his choices."

The court, too, was concerned, and discussed the burdens of pro se status with defendant at length. Then the court said, "if you decide you are not going to participate in this case, . . . I'm going to relieve you of your pro. per. status, and I'm going to direct Mr. Daugherty to proceed on the defense of this matter." The court explained that to put on no defense was basically to plead guilty, that "the risk you take is substantial and I think I become party to that risk if you did elect to sit back and not take any steps to represent or defend yourself."

Defendant explained that he could not proceed with Daugherty as assistant counsel because Daugherty had "ruined" everything, but that to try to defend without Daugherty would not work either, because Daugherty's preparation was in support of some defense defendant did not want. Therefore it was better either to not defend at all, or have the court fire Daugherty and "allow me to have an attorney to assist me that I can have some kind of faith and trust in." The court refused to consider appointing another attorney, because such an appointment would require further continuance. The court noted that it had been five and a half months since defendant had been granted pro se status, plenty of time in which to prepare a defense.

Defendant then said he wanted to present a defense. The court seized on this admission, and explained that this is what it would insist on: "If you are going to stand

mute and rely on my previous rulings at this point, up to this point in the trial, I would not allow you to do that. [¶] I think it would be irresponsible for me to allow you to stand mute and let the People present the kind of evidence I know they will present. [¶] And your hope or wishful thinking, whatever flaws in this case are going to be identified by the jury, I think is wishful thinking to the point of being irresponsible."

Defendant agreed with the court that it was wishful thinking to suppose the jury would not convict him if he stood mute, but he argued that a reversal was certain on appeal because of the trial court's errors.

The court responded that a reversal on appeal was not to be counted on, that there was too much at stake, and that it wanted to assure defendant of a fair trial. The court gave defendant until the actual commencement of voir dire to reflect, find authority and convince the court that his was a "legitimate tactic," but gave an indicated ruling that it would not permit defendant to stand mute. The next day, when voir dire was to begin, the court reiterated its ruling that defendant would not be permitted to stand mute.

The record supports the conclusion that defendant lacked a sincere desire not to participate in his defense at the guilt phase of trial. As in *People v. Clark, supra*, 3 Cal.4th at page 114, defendant had eagerly sought to defend himself and had a particular defense strategy in mind when he became disgruntled with some of the court's rulings and with his assistant counsel's attitude. He admitted that he would be kidding himself to think he had any chance of prevailing at trial if he put on no

defense; rather, he sought to interject error into the trial so that the conviction would be reversed on appeal. At the very least, he was operating under the misapprehension that he was sure to prevail on appeal. Both the court and defendant's assistant counsel expressed the opinion that defendant was simply playing for time.

Once a pro se defendant invites advisory counsel to assist him, his standing to complain that counsel interfered with his presentation of a defense sharply diminishes. (*McKaskle, supra*, 465 U.S. at p. 182.) The court retains authority to exercise its judgment regarding the extent to which such advisory counsel may participate against defendant's wishes. (*Id.* at p. 178, fn. 8; *People v. Clark, supra*, 3 Cal.4th at p. 115.) Similarly, we think that the court retains authority to determine whether defendant's expressed desire to stand mute is sincere, or whether it is an attempt to coerce the court. Here, the court went beyond that task by also expressing the opinion that defendant would not have a fair trial if he stood mute; nonetheless, the court also made it clear that defendant's reason for standing mute was not that he had no defense, or that he thought silence was the best defense, but that he was not pleased with the way things were going and thought he was sure to get a second trial where things would go his way. We see no error in a court refusing to permit a defendant to stand mute at trial, when that defendant is attempting to manipulate the legal system while operating under such a basic misapprehension.

That defendant's desire to stand mute was insincere and manipulative is further demonstrated by his earlier threat to do the same thing. Two months before the

commencement of trial, the court indicated that it thought defendant was not entitled to the appointment of two counsel to assist him; after discussion the court appointed Daugherty as assistant counsel and relieved Robusto, who had been appointed in the capacity of advisory counsel. The court added that Robusto could finish working on any matters he had in hand. Defendant immediately threatened to stand mute if he could not have both men assisting him, and if he could not require Daugherty to handle a witness exactly as he, defendant, saw fit. His reason was that the trial court was in error and that the case should proceed rapidly to judgment so that he, defendant, could be vindicated on appeal. He abandoned his position, but his tendency to attempt to blackmail the court with the threat to stand mute is evident.

Defendant complains of a second instance when his desire to stand mute was met with a threat to revoke his pro se status. At the conclusion of the People's case-in-chief at the guilt trial, defendant complained that his defense witnesses would not be called in a certain order, and that therefore, he preferred to put on no defense and stand mute. The court was understandably stunned, and asked "Because we're down to the point we've got witnesses here and you're now pouting because somehow or another you can't get them in a particular order[?]"

The court continued: "Several times during this trial when things haven't gone exactly your way, you begin to withdraw and you get upset and you indicate you're not going to participate. . . . If you decide you don't want to proceed with your witnesses, then we'll - I'll instruct Mr.

Daugherty to proceed with the defense that was originally scheduled by the attorneys that were going to present a defense in this case. [¶] But that's a decision you have to make. Sometimes you have to take witnesses out of order. That's just the way things are."

The court pressed defendant to explain why it was so critical to his defense that his witnesses be called in a certain order, and defendant was utterly unable to do so. The court asked whether defendant would present his defense and defendant persisted: "I'm left with an alternative of no defense because of what is happening here. And I am looking ahead. I see what is happening. I am not totally blind. I have made complaints about this repetitiously since this case has begun with attorney Daugherty."

The court informed defendant that he was simply trying to cloud the record and giving the court a "song and dance" without telling the court what it was he wanted. Defendant grew sulky and repeated that he was thinking of resting the defense. After conferring with assistant counsel, he announced that he would like to rest the defense, but that counsel had informed him that the court would direct assistant counsel to put on the defense he had prepared. Defendant commented that from the court's earlier position, he had no doubt that counsel was right about what the court would do. As he was adamantly opposed to losing his pro se status, he said he would present a defense, but that he needed time to interview some witnesses.

The court pointed out that defendant had had months to interview his witnesses, and that there was no

justification for any delay. The court directed defendant to proceed with his witnesses, or have Mr. Daugherty proceed.

Again, the record supports the inference that at this point in the trial, defendant did not sincerely want to abandon his defense. He had a long list of witnesses to be called, and was so concerned about the proper presentation of his defense that he became irrational when he found he could not present the witnesses in a particular order. His stated inclination not to present any defense was not sincere, but was a petulant reaction to being frustrated regarding the order of witnesses.

It is of course true that defendant ultimately *did* stand mute at the penalty trial. But we must examine the trial court's response to his earlier threats to do so in light of the record available to the court at the time it was called upon to rule. In both instances at the guilt trial, as we have seen, the court justifiably thought that defendant was being manipulative, and that his desire to stand mute was not a sincere decision that this would be the best defense, but an attempt to interject error and delay into the proceedings. By contrast, as to defendant's decision to stand mute at the penalty trial, defendant had made it clear throughout the proceedings that if he were convicted, he would seek the death penalty, and that no defense was to be prepared. He was outraged when he found his investigators had done some work on uncovering defense evidence to be presented at the penalty trial; he was consistently adamant that no defense be prepared or presented.

In sum, we see no improper interference with defendant's right to represent himself. Defendant used the threat to stand mute as a weapon when the court ruled against him. The court was within its power to counter that apparently insincere threat with its threat to revoke defendant's pro se status, which, after all, was not inviolate. (*Faretta, supra*, 422 U.S. at p. 835, fn. 46; *People v. Clark, supra*, 3 Cal.4th at p. 115.)

2. Impact of Confinement on Self-representation.

Defendant complains that the trial court was indifferent to the conditions of his confinement during trial, and that these conditions impaired his ability to represent himself, in violation of the Sixth Amendment of the United States Constitution, article I, section 15 of the California Constitution and *Faretta, supra*, 422 U.S. 806. (See also *Milton v. Morris* (9th Cir. 1985) 767 F.2d 1443, 1446.)

The record is otherwise. The court held hearings so that defendant could air his complaints about the availability of books, lighting conditions, the filling of his prescription for eyeglasses, and four security searches that had occurred in his cell. The court intervened in several instances, and made a factual finding that defendant's legal materials had not been disturbed during two searches, and that defendant had adequate time to reassemble disturbed materials in the case of the searches that did affect his materials. Defendant had two lawyers and several law clerks and investigators at his disposal, as well as access to the law library. He fails to bring to

our attention any fact demonstrating that his confinement unfairly impaired his ability to represent himself.

Thus, for example, when defendant complained that the lighting conditions in his cell and the noise in the jail were impairing his ability to work on his case, we conclude the court was justified in responding after a hearing on the matter that the lighting, though not perfect, was adequate, and that the voluminous output of motions defendant had produced from the cell belied his claim. There had been testimony that defendant could read and study in his cell, and that the lighting was adequate in the library and holding cell.

Defendant also complained that he was wasting time and energy riding on the common inmate's bus from downtown Los Angeles to Pomona and back each day of trial, and that during the many hours a day he spent in transit, other inmates verbally abused him. The court again responded after a hearing that the time in transit did not seem to have impaired the defendant's ability to participate, and that defendant was kept away from other prisoners so that he could not be harmed.

And when defendant complained that the library facilities available to him were inadequate, because, for example, pages had been torn out of the books, the court appropriately pointed out that defendant had not only the jail law library at his disposal, but also the assistance of two lawyers and two law clerks who could and did supply him with legal materials.

Defendant's charge that the court failed to intervene on his behalf to mitigate the effect of confinement on his ability to represent himself is contradicted by the record.

The court ordered that he be given a typewriter in his cell until jail authorities pointed out it could be dismantled and turned into a weapon. The court determined that defendant would have access to a typewriter in the jail library and also indicated it would accept handwritten motions. The court directed jail authorities to place defendant in a library group in which he would not feel threatened. The court ordered two medical appointments for defendant, and ordered that he receive the glasses he needed. He received three pairs of glasses, in all. Defendant was permitted to use the library by himself on weekends to make up for time in court. The court ordered that special accommodations be made so that defendant could visit the jail store on Fridays, when court was not in session.

As for the searches of defendant's cell, defendant again is unable to show how they impaired his ability to prepare his defense. Defendant complained that he had been awakened in the night and subjected to a disruptive search on April 26, 1985, but the court found that the search had not impaired his ability to prepare. The court stated that defendant's preparation would be based mainly on the daily transcripts, which were obviously very easy to reassemble. The court commented that defendant had excellent recall and command of the evidence, and that he would have had five days to reassemble his notes by the time they were required for closing argument.

Another search occurred on May 11, 1985, but this time, defendant's complaint was that the searching officer had an animus against him and intended to harass him

and interfere with his ability to prepare. Again, defendant had several days to reorganize his materials before they were needed for closing argument. Defendant's complaint that searches on May 23 and May 24, 1985, interfered with his preparation of his opening statement for the penalty phase of trial was not credited. The court held a hearing and took evidence from the searching officers, and apparently believed the latter's testimony that they left defendant's materials in the exact order they found them.

Defendant's claim that he was denied reasonable access to resources necessary to enable him to represent himself cannot be sustained. We are satisfied that the trial court adequately assured such access in defendant's case.

3. Knowing, Intelligent Waiver of Right to Counsel.

In the alternative, defendant argues not that his right to represent himself was violated, but that his state and federal constitutional right to counsel was violated because he was not adequately warned of the limitations that would be imposed on his right and ability to represent himself. He argues specifically that he was not advised (1) that the court would limit his control over the defense to be presented, or (2) that his custody status might change and begin to impair his ability to represent himself.

No particular form of words is required in admonishing a defendant who seeks to forego the right to counsel and to represent himself. "The test of a valid waiver of counsel is not whether specific warnings or advisements

were given but whether the record as a whole demonstrates that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case." (*People v. Bloom* (1989) 48 Cal.3d 1194, 1225.)

The court repeatedly and laboriously warned defendant of the dangers of self-representation. The record as a whole establishes defendant's competency to make that decision, and he does not now raise the issue of competency. We have concluded that the court did not impinge on defendant's ability to control the defense of his case, nor did the conditions of defendant's incarceration ever impair his ability to defend himself. Accordingly, defendant's argument is based on an inaccurate premise and cannot be sustained.

B. Miranda Violation.

Defendant asserts that evidence of his statements to the police was admitted in violation of his rights under *Miranda*, *supra*, 384 U.S. 436. Respondent would bar the claim on appeal because at trial defendant incorrectly moved to suppress the statements under section 1538.5, and because defendant failed to renew his motion to suppress when the statements were offered in evidence at trial. Respondent also argues that the statements were admissible despite any *Miranda* violation because they were offered only for impeachment. (See *Harris v. New*

York (1971) 401 U.S. 222, 225; *People v. May* (1988) 44 Cal.3d 309, 319-320.)¹¹

It is true that a motion to suppress statements for claimed violations of Fifth and Sixth Amendment rights is not properly brought under section 1538.5. A motion under that section lies to exclude evidence obtained in violation of the right to be free from unreasonable searches and seizures. (*People v. Mattson* (1990) 50 Cal.3d 826, 850-851.)

The trial court clearly understood that defendant's claim was based on the Fifth Amendment and *Miranda*, *supra*, 384 U.S. 436. The court treated the motion as a nonstatutory motion to exclude under Evidence Code section 402, and we will do the same. (See *People v. Mattson*, *supra*, 50 Cal.3d at pp. 851-852.)

It is also true that *in limine* motions to exclude evidence normally must be renewed when the evidence is introduced at trial in order to preserve the issue for appeal. (*People v. Morris* (1991) 53 Cal.3d 152, 189.) Nonetheless, as the motion was advanced on a specific legal theory, was directed to a "particular, identifiable body of evidence," and the motion was made "at a time . . . when the trial judge [could] determine the evidentiary question in its appropriate context," we decline to find that the issue was waived for the purpose of appeal. (*Id.*, at p. 190; see also *People v. Boyer* (1989) 48 Cal.3d 247, 270, fn. 13.)

¹¹ Defendant's claim that any error affecting the jury's evaluation of his credibility must be deemed prejudicial is not separately addressed, because we have found no such error.

Defendant made statements to the police about his movements on the day of the crime, and these were admitted in the prosecution's case-in-chief. The statements were inconsistent with other prosecution evidence; they were not merely used to impeach defendant's trial testimony, but as substantive evidence of his guilt. Thus, for example, although defendant said to the police that he had gone to a certain Sambo's restaurant at a critical time on the night of the crime, a waitress at the restaurant testified that defendant was a regular customer but that he had not been at the restaurant on the night of the crime. The jury was instructed they could rely on the statements to show consciousness of guilt. As the statements were not simply offered to impeach defendant when he testified, they do not fall within the rule that statements taken in violation of *Miranda* may be used for impeachment. (See *Harris v. New York*, *supra*, 401 U.S. at p. 225; *People v. May*, *supra*, 44 Cal.3d at pp. 319-320.)

The question we must resolve is whether defendant was in custody and subject to interrogation when the statements were made. The trial court found that defendant became subject to a custodial interrogation at a certain point in the interview; defendant would have us find the entire interview a custodial interrogation. The trial court's resolution of factual disputes is to be affirmed if it is based on substantial evidence. (*People v. Mickey* (1991) 54 Cal.3d 612, 649; see also *People v. Clair* (1992) 2 Cal.4th 629, 679.) "We must accept the trial court's resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly

found by the trial court, whether the challenged statement was illegally obtained." (*People v. Boyer*, *supra*, 48 Cal.3d at p. 263.)

Custody " 'occurs if the suspect is physically deprived of his freedom of action in any way or is led to believe, as a reasonable person, that he is so deprived.' " (*Green v. Superior Court* (1985) 40 Cal.3d 126, 133-134, quoting *People v. Arnold* (1967) 66 Cal.2d 438, 448; see also *Berkemer v. McCarty* (1984) 468 U.S. 420, 442.) "In deciding the custody issue, the totality of the circumstances is relevant, and no one factor is dispositive. [Citation.] However, the most important considerations include (1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning." (*People v. Boyer*, *supra*, 48 Cal.3d at p. 272.)

Testimony at the hearing on the motion to suppress showed that the officer in charge of investigating the murder of Robyn, Lieutenant Johnston of the Baldwin Park Police Department, had some information indicating that the victim had been talking to an ice cream truck driver before her disappearance. Two ice cream truck drivers, including defendant, were asked to come to the police station for questioning. Johnston was more suspicious of the other driver, as he met the description the officer then had of the driver seen with Robyn just before she disappeared, while defendant did not. As far as Johnston knew, defendant had last seen the victim an hour or so before she disappeared. While the officer was involved in questioning the other ice cream truck driver, he asked Officer Lee, who was not involved in the investigation, to

go to defendant's home in Pomona to ask him if he would come to the Pomona police station for questioning as a potential witness. Johnston steadfastly denied during the hearing that suspicion had focused on defendant at the time he was asked to come to the station. The officer considered defendant merely a potential witness, and so instructed Lee.

Lee and three other plainclothes Baldwin Park police officers arrived at defendant's trailer at 11 p.m., with guns out but not displayed. They were not homicide investigators. They drew their guns for their own protection; they were not familiar with the area and did not know what to expect. Officer Lee, who talked with defendant, had his gun hidden behind his leg. He had not been told that defendant was a suspect, and had not been told to arrest him if he refused to come to the station. Lee was told to treat defendant as a witness. Defendant was very cooperative and agreed to come in to the Pomona Police Department for an interview. He was given the choice whether to accept a ride with the police or to drive his own car. He accepted a ride and sat in the front seat with Lee, under no restraint. He was placed in an interview room in the jail section of the Pomona Police Department, because Lee was from another police department and did not know whether any other section of the Pomona police station would be open late at night. Johnston came to interview defendant in the jail section interview room because he had experienced difficulties and delays in using the nonsecure area of the police station in interviewing another witness that evening.

Defendant was interviewed by Johnston, and another Baldwin Park officer observed. Neither of them considered defendant to be in custody, and both testified that defendant could have left the interview room had he asked to. He would have needed their help to leave, as he was in a locked interview room in the secure area of the jail. Johnston asked defendant about his movements on the previous day, and defendant recounted them. He said he had seen the victim about 6 p.m., had continued on his ice cream route, and had taken a circuitous journey back to his home Pomona because he was experiencing engine trouble. He described buying gasoline, then arriving home about 9 p.m. When defendant said that he had left his home about midnight in a borrowed turquoise car, Johnston became suspicious, as a witness had seen the victim thrown from a turquoise car in the early morning hours. The officer asked defendant whether he had any criminal record, and defendant admitted prior convictions for rape, kidnapping and child molestation. Johnston terminated the interview, which had lasted 20 or 30 minutes. He conferred with two other homicide investigators and returned to the interview room with them. They advised defendant of his *Miranda* rights, and defendant declared that he did not wish to make any further statements.

The trial court concluded that when defendant was brought to the station, he was not the focus of suspicion. The court noted the information that Johnston had at the time of the interview. This information suggested that the victim had been abducted by another man driving an ice cream truck, and that the conduct of this man when he was contacted as a witness tended to confirm Johnston's

suspicious. It was only when defendant said that he had taken a turquoise car out in the early morning hours that suspicion focused on defendant, and the court suppressed statements made after that point.

The trial court's determination that suspicion focused on defendant only when he mentioned that he had driven a turquoise car on the night of the crime is supported by substantial evidence. All the police officers involved testified that defendant was not considered a suspect until that point in the interview. Defendant was invited, not commanded, to come to the police station for an interview, and he was given the option of driving himself. As we have noted, the officers involved testified that they would have honored his refusal to come to the station, and that they would have let him go during questioning if he had so requested. Defendant did not testify at the hearing; there is no evidence that defendant felt under restraint.

Defendant disputes the accuracy of the trial court's finding, and by implication, the truthfulness of the officers who testified at the hearing. We accept the trial court's finding on this point as supported by substantial evidence, but we also point out that at the time of the interview the police were following many leads. They had not decided that the perpetrator was probably the driver of an ice cream truck, let alone that it was defendant. They had only a small child's observation to connect the abduction to an ice cream truck driver, while an adult witness had actually seen the victim removed from a turquoise passenger car and flung into a ditch. Defendant's insistence that suspicion had focused on him because he was an ice cream truck driver who had been

seen talking to the victim an hour before her abduction ignores the state of information available to the police at the time of the interview.

We also observe that the form of questioning at defendant's interview was not accusatory; the investigating officer simply asked defendant, a potential witness, to describe his movements and observations. (Cf. *Green v. Superior Court*, *supra*, 40 Cal.3d at p. 132 [questions detailed but not accusatory].) This is not a case in which officers accused defendant of involvement in the crime, or of lying about his movements, or in which the officer confronted the defendant with evidence against him (cf. *People v. Boyer*, *supra*, 48 Cal.3d at p. 272) or asked for cooperation in lieu of immediate arrest and incarceration. (Cf. *People v. Celaya* (1987) 191 Cal.App.3d 665, 668-669, 672.) This was simply an investigation regarding a lead that had not focused suspicion on defendant. (See *People v. Holloway* (1990) 50 Cal.3d 1098, 1115.) Defendant's answers were for the most part in a narrative form. The interview was brief.¹²

Defendant makes much of his claim that the officers who invited him to the station arrived at his door with guns in their hands. (See *People v. Taylor* (1976) 178 Cal.App.3d 217, 229.) However, as we have noted, Officer Lee, who spoke to defendant, had his gun hidden behind

¹² Defendant's claim that there is a conflict in the evidence about the length of the interview is not supported by the record. The evidence is that the interview took 20 or 30 minutes. After defendant mentioned the turquoise car, it took an hour or so to decide how to proceed, and to book defendant, but the length of the interview up until that point was a brief 20 or 30 minutes.

his leg. The other officer who testified on the point said his gun was not drawn, but in his hand, not pointed at anyone. There is no evidence defendant saw the guns. In any case, we have said that police display of guns does not alone create a custodial situation. (*People v. Clair*, *supra*, 2 Cal.4th at p. 679.)

Defendant notes that he was on parole at the time of his encounter with the police, and that this must be considered to have strengthened his impression that he had no choice but to cooperate. But neither the officers who contacted him nor the officers who interviewed him knew he was on parole. Their conduct would not suggest to the reasonable person that they were exerting authority over him under the terms of the conditions of his parole. They solicited his voluntary cooperation, asked if he wanted to drive himself to the station, and conducted him there under no restraint. This was hardly an assertion of authority such that the reasonable person would consider there was no choice but to obey.

Although it is true that defendant was interviewed in a locked room, there is no evidence that he felt that he could not ask to leave at any point. The coercive environment of the police station is not in itself enough to establish that lack of freedom of movement that is essential to custody. (*California v. Beheler* (1983) 463 U.S. 1121, 1125; see also *Oregon v. Mathiason* (1977) 429 U.S. 492.) Officer Johnston testified that he would have released defendant upon his request up until his mention of the turquoise automobile. "Notwithstanding the lock on the interview room door, the evidence does not compel the conclusion that defendant could not have left whenever

he wanted during the interview." (*Green v. Superior Court*, *supra*, 40 Cal.3d at p. 136.)

We conclude that defendant was not subject to custodial interrogation before he mentioned the turquoise car. The trial court suppressed all statements made after that point; it was not error to refuse to suppress any statement or fruit of a statement made before that point.

C. Failure to Preserve Evidence.

Relying on *People v. Hitch* (1974) 12 Cal.3d 641, defendant claimed at trial that the police violated his state and federal due process rights because they failed to preserve the contents of the ice cream freezer in the ice cream truck he was driving on the night of the crime. He also claimed his due process rights were violated because police removed a gasoline sales receipt from the truck and lost it.

After a very lengthy evidentiary hearing, the trial court rejected defendant's argument and denied his motion for sanctions, but invited defendant to request cautionary jury instructions if the evidence at trial supported them.¹³ Defendant did not request any jury instructions on this point.

The police seized the ice cream truck and examined it, including the freezer, for physical evidence of the

¹³ Defendant sought as a sanction a ruling that no prosecution witness could mention the condition of the ice cream boxes found in the freezer of the ice cream truck he had been driving or express an opinion whether the victim had been in the freezer.

victim's presence. Before they removed the contents of the freezer, they photographed most of the interior of the freezer. They found no physical evidence of the victim's presence, apart from some inconclusive evidence that the ice cream boxes were in disarray, that some boxes appeared to have been crushed, and that some ice cream appeared to have melted and refrozen. However, there was no pattern to this crushing or melting. The police criminalist did not consider retaining the freezer and its contents, but released the ice cream truck with its contents to its registered owner. He considered that the contents of the freezer could be reconstructed by using the photographs taken at the time of the search, and that this would be adequate to determine whether a body had been in the freezer.

Defendant argued that failure to keep the freezer with its contents still frozen deprived him of the opportunity to examine the freezer for evidence that no body had been in it. A defense criminalist testified at the hearing on the matter that he would have numbered the ice cream boxes before removing them to search for blood and hair, and then he would have reassembled the boxes as they had been found. He would have kept the freezer in working order or would have kept the contents in some other freezer if that were not possible. As a defense criminalist, he would have examined the ice cream boxes to see if he could demonstrate that they showed no signs of crushing or melting, or other sign that a person had been deposited in the ice cream freezer.

The state's duty to preserve evidence is "limited to evidence that might be expected to play a significant role

in the suspect's defense. To meet this standard of constitutional materiality, [citation], evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means." (*California v. Trombetta* (1984) 467 U.S. 479, 488-489, fn. omitted.) This rule supersedes the standard we stated in *People v. Hitch*, *supra*, 12 Cal.3d 641. (*People v. Johnson* (1989) 47 Cal.3d 1194, 1233-1234.)

Defendant's claim that the exculpatory value of the evidence should have been clear is misplaced. His own expert provided only speculation that the evidence *might* have proved to be of exculpatory value. "The mere possibility that an item of . . . information might have helped the defense . . . does not establish 'materiality' in the constitutional sense." (*People v. Fauber* (1992) 2 Cal.4th 792, 829, quoting *United States v. Agurs* (1976) 427 U.S. 97, 109-110.)

Defendant argues that because the police search of the freezer uncovered no physical evidence such as blood or hair, the freezer contents must be deemed clearly exculpatory. We disagree. The exculpatory evidence that the freezer contained no trace of blood or hair or body fluid was available and before the jury. However, the evidence regarding the condition of the freezer contents was somewhat inculpatory, as there was some evidence of crushing and melting. It is not evident to us, especially given the speculative nature of the testimony of defendant's expert, that the exculpatory value of this evidence should have been clear to the police.

Further, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." (*Arizona v. Youngblood* (1988) 488 U.S. 51, 58.) This requirement is followed in this state. (*People v. Cooper* (1991) 53 Cal.3d 771, 810-811.) The police criminalist did not consider retaining the contents of the freezer because he was satisfied that the photographs adequately recorded the condition of the evidence. The record is devoid of evidence that the police acted in bad faith.

As for defendant's claim that the police violated his due process rights when they lost a gasoline sales receipt they had confiscated from his truck, comparable evidence was available. The prosecution stipulated to the existence of the receipt, and the date and place of the sale. The police had a record of the receipt in the evidence log, also confirming the date and place the receipt was issued. Defendant would have had the court instruct the jury that the receipt would have showed that he bought gas at a particular time; but it is uncontroverted that the receipts from the gas station in question did not contain the time of the sale. Defendant could have contacted witnesses at the gas station to ascertain the time of the sale, but he waited almost two years to do so. By that time apparently no one remembered, but a more timely inquiry could have unearthed the evidence. Thus, comparable evidence of the time of this gasoline sale was available to defendant. In any event, again, there was no evidence that the police acted in bad faith. The receipt was simply lost, despite a major search for it in various record repositories and among the personal and business effects of persons

officially connected with the case. We conclude that there was no due process violation.

D. Prosecutorial Misconduct.

Defendant urges that the prosecutor committed prejudicial misconduct when, in argument to the jury, he urged the jurors to imagine the victim's feelings, made improper statements regarding evidence of defendant's consciousness of guilt and his alibi defense, and vouched for the credibility of a key prosecution witness.

There was no objection to any of these comments and any harm arising from them could have been cured by an admonition. Therefore the issue is waived on appeal. (*People v. Green* (1980) 27 Cal.3d 1, 27; see also *People v. Clair, supra*, 2 Cal.4th at p. 662.)

Even if defendant had preserved his claims, we would find no reversible error.

The prosecutor improperly appealed to the passions of the jury in urging them to consider the suffering of the victim: "Under what we are dealing with here, we are dealing with a 10-year old child who was taken from her home, taken to a place she had never been, experiencing things she had no idea how to deal with. [¶] She was degraded, violated, raped, evidence of oral sex. [¶] *Think what she must have been thinking in her last moments of consciousness during the assault.* [¶] *Think of how she might have begged or pleaded or cried.* All of those falling on deaf ears, deaf ears for one purpose and one purpose only, the pleasure of the perpetrator." (Italics added.)

We have settled that an appeal to the jury to view the crime through the eyes of the victim is misconduct at the guilt phase of trial; an appeal for sympathy for the victim is out of place during an objective determination of guilt. (*People v. Fields* (1983) 35 Cal.3d 329, 362; see also *People v. Pensinger* (1991) 52 Cal.3d 1210, 1250 [misconduct to ask jury to suppose crime had happened to their children].)

Nonetheless, we find no prejudice. The statement must be viewed in context; final argument extended over a period of four days, and this was but a single reference in a long, complex and otherwise scrupulous argument about the facts of the case. We note also that the jury deliberated for four days, and we do not believe a brief statement of this sort would sway the jury over that long a period. There is no reasonable probability that a result more favorable to defendant would have been reached in the absence of the misconduct. (*People v. Pensinger, supra*, 52 Cal.3d at p. 1250.)

Defendant also complains that in his attack on defendant's alibi defense, the prosecutor committed misconduct by interjecting his personal belief and experience as a prosecutor. Characterizing the defense as based upon lies and deception, the prosecutor said "that's the best case I've ever seen in any case I've ever prosecuted of intentional misrepresentation and consciousness of guilt."

The prosecutor's comment on the evidence was not inappropriate. (See *People v. Rich* (1988) 45 Cal.3d 1036, 1092 [appropriate comment on the evidence to argue "I have never seen deliberation and premeditation like that"].) We disagree that the jury would understand that the

prosecutor was trying to sway them by referring to facts outside the record or to his own personal beliefs regarding defendant's credibility. Defendant omits the prosecutor's very next words: "And if you believe that that's what you were a witness to or subjected to, then you may consider that in deciding that Mr. Stansbury is, in fact, guilty, and that may weigh in your decision." The prosecutor attacked defendant's alibi in argument for two days, meticulously countering every claim and bringing to light every inconsistency and falsehood. It must have been evident to the jury that it was the evidence produced at trial, not the prosecutor's experience, that demonstrated defendant's mendacity and consciousness of guilt. Indeed, the prosecutor more than once reminded the jury that his views were not controlling, but that they should consult their notes and the transcript of the trial. The jury was instructed to the same effect. We conclude that it is not reasonably likely that the jury would have understood the remarks as defendant urges. (See *People v. Clair, supra*, 2 Cal.4th at pp. 662-663.)

Defendant next claims the prosecutor made an improper comment on defendant's courtroom demeanor in his opening statement. (See *People v. Heishman* (1988) 45 Cal.3d 147, 197.) The prosecutor noted that the evidence was that at the time of the crime, defendant had a shaggy beard, and dirty long hair. At trial, he was clean-shaven and well dressed. The prosecutor suggested that this transformation was intended to deceive the jury and the witnesses who would be called upon to identify him. "As you sit in this courtroom right now, you are the victims, the intended targets, the recipients of another con job, if you will. Maybe not so strong. Maybe more on the subtle

ground. But take a look at Mr. Stansbury right now. I invite you to look at him, his appearance, demeanor. You might expect him to be a businessman that you might meet in the street, nice three-piece suit." The prosecutor surmised that the witnesses would not be deceived, and that the defendant's primary motivation in altering his appearance was to give the jury a false impression of his character through his demeanor. He concluded: "That's not important, I suppose. It's his right. He can look and appear anyway he wants to. Just understand, that's all I'm asking, understand what's going on. Draw whatever conclusions you feel are appropriate, whether motives you wish to ascribe, whatever significance you put. When you are here as jurors, you are here to hear and see and feel what you deem to be appropriate. . . . It will be you and you alone who will ultimately decide the facts in this case, on whatever grounds and whatever basis and whatever procedures you think to be appropriate."

Far from being the centerpiece of the prosecutor's argument, as defendant claims, this was a brief detour, halfheartedly undertaken, intended to warn the jury to disregard the defendant's appearance in evaluating his credibility. This was not a case in which the jury was arguably instructed that it could consider a nontestifying defendant's demeanor as evidence of guilt. (Compare *People v. Garcia* (1984) 160 Cal.App.3d 82, 90-91.) The advice to ignore the defendant's demeanor and decide the case on the basis of the evidence is not misconduct. (*People v. Price* (1991) 1 Cal.4th 324, 454.) The suggestion that defendant was a "con man" was an appropriate comment, in colorful terms, upon the evidence to be

introduced at trial. (See *People v. Pinholster* (1992) 1 Cal.4th 865, 948.)

Finally, defendant makes a completely insubstantial argument that the prosecutor improperly vouched for the credibility of prosecution witness Beverly Allen. We disagree with his claim. The argument that Allen was a believable witness who had done a great deal of soul searching was a proper comment on the evidence, not an attempt on the part of the prosecutor to personally vouch for the witness's credibility. (Cf. *People v. Gates* (1987) 43 Cal.3d 1168, 1186-1187.) "Argument that states the prosecutor's conclusions as to the weight of the evidence and conclusions to be drawn from it is proper." (*People v. Clark* (1990) 50 Cal.3d 583, 630.) The claim that the prosecutor used the prestige of the prosecutor's office to display Allen as a strong witness is refuted by the record. The prosecutor said: "We haven't shown her any evidence . . . in this case because I wanted her to make her information as strong or as weak as it was going to be based on what she knew and what she knew alone." (*Italics added.*) We see no misconduct.

E. Motion for Mistrial.

Defendant argues that the trial court erred in refusing to grant a mistrial after defendant's own witness volunteered under cross-examination that she thought he had recently been released from prison.

Patricia Jackson testified for the defense that she had accepted a ride from defendant on the night of the crime about 2 a.m. Her testimony was offered in support of his

alibi defense. On cross-examination, after asking about her encounter with defendant, the prosecutor asked: "How did you find out about this case?" The witness launched into the following narrative: "Well, that particular – okay. [¶] That evening I got in. And not knowing, I was watching Channel 7 news the next day, which I still didn't put it together at the time that this was the gentleman that I had rode home with. [¶] I never did until the police came a week from then, that Thursday. [¶] And then they told me. And that like kind of confirmed that. [¶] Other than that, I seen the news and what was said and everything. [¶] And I had commented to my mother because I think the news lady had said that this particular person had just got out of prison. I'm not sure." The prosecutor interrupted: "Excuse me. [¶] Now, the question – we're getting a little ahead of ourselves, Mrs. Jackson. [¶] You said the police came by?"

After a few more questions, the court declared a recess. It instructed the witness not to say anything further about defendant having been in prison. It noted for the record that when the witness volunteered the remark about prison, the court heard Daugherty tell defendant to object. Daugherty said he had anticipated the problem, and had told defendant to object that the witness was being nonresponsive even before the damaging statement came out. Defendant explained that he had not objected because he was "hoping that because of the continuing dialogue that it would hopefully be lost." The court noted that it had had no warning that the statement was coming, and that it seemed none of the other participants had foreseen the problem. The prosecutor agreed that he had no idea the witness would make such a statement, and

said that he had done his best to cut off further statements and move the witness along to another topic. He also stated that he had not seen any response from the jury to the statement. The defendant acknowledged that the prosecutor had "artfully" tried to cut the witness off. After conferring with advisory counsel, however, defendant moved for mistrial. The court heard argument but denied the motion without comment.

"A mistrial should be granted if the court is apprised of prejudice that it judges incurable by admonition or instruction. [Citation.] Whether a particular incident is incurably prejudicial is by its nature a speculative matter, and the trial court is vested with considerable discretion in ruling on mistrial motions." (*People v. Haskett* (1982) 30 Cal.3d 841, 854; see also *People v. Cooper, supra*, 53 Cal.3d 771, 838-839.)

The witness's statement that she had heard defendant had been in prison was clearly improper and non-responsive. However, the statement was brief, the witness uttered her hearsay assertion without any apparent faith in its accuracy, and the point was never touched on again. Defendant himself originally thought the statement was best left without objection, and he never did ask for any admonition to the jury to disregard it. (Cf. *People v. McLain* (1988) 46 Cal.3d 97, 113.) We find no abuse of discretion in denying the motion for mistrial.

F. Denial of Representative Jury.

Defendant claims that at the time of his trial, jury venires in the Pomona district of Los Angeles County

were not drawn from a representative cross-section of the community, in violation of his rights under the Sixth Amendment of the United States Constitution and article I, section 16 of the California Constitution. He contends that a systematic underrepresentation of Hispanic persons and young people aged 18 to 24 was caused by excuses from service for economic hardship.

"In order to establish a prima facie violation of the fair-cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury-selection process." (*Duren v. Missouri* (1979) 439 U.S. 357, 364 (hereafter *Duren*); see also *People v. Bell* (1989) 49 Cal.3d 502, 525, fn. 10.)

As for the first prong of *Duren*, it is established that Hispanics are a distinctive group. (*People v. Howard* (1992) 1 Cal.4th 1132, 1160.) We have not spoken on the question whether the young are a distinctive group; the Court of Appeal has rejected the claim a number of times (*People v. Henderson* (1990) 225 Cal.App.3d 1129, 1153; *People v. McGhee* (1987) 193 Cal.App.3d 1333, 1349, 1351-1352; *People v. Marbley* (1986) 181 Cal.App.3d 45, 47-48; *People v. Parras* (1984) 159 Cal.App.3d 875, 877; *People v. Estrada* (1979) 93 Cal.App.3d 76, 93), as have the majority of federal circuits. (See *Wysinger v. Davis* (11th Cir. 1989) 886 F.2d 295, 296, and cases cited; *United States v. Potter* (9th Cir. 1977) 552 F.2d 901, 905; but see *Barber v. Ponte* (1st Cir. 1985) 772 F.2d 982, 986-989, and cases cited.)

The parties dispute whether the second prong of *Duren* has been met. In support of his motion to quash the venire, defendant presented testimony by an expert showing an absolute disparity in Hispanic representation in four venires of 8.4 percent, and a comparative disparity of 51 percent. "We have previously noted that 'the [United States] Supreme Court has not yet spoken definitively on either the means by which disparity may be measured or the constitutional limit of permissible disparity.' " (*People v. Sanders* (1990) 51 Cal.3d 471, 492, quoting *People v. Bell*, *supra*, 49 Cal.3d at pp. 527-528.)

We need not determine whether the exclusion of the young falls under the first prong of *Duren*, or whether defendant has shown a significant level of disparity under the second prong of *Duren*, because defendant has failed to establish a prima facie case under *Duren*'s third prong by showing that the disparity he complains of was caused by systematic exclusion.

A defendant cannot carry the burden of showing a systematic exclusion "with nothing more than statistical evidence of disparity. One must, in addition, show that the disparity is the result of an improper feature of the jury-selection process." (*People v. Howard*, *supra*, 1 Cal.4th at p. 1160.) Defendant claims he has met this burden because his expert testified that the disparity probably arose when jurors summoned for service sought to be excused due to economic hardship.

However, defendant provided no evidence that a more lenient standard was applied to a request for excuse

from service for hardship when Hispanic and young persons made the request. Such evidence is critical to defendant's claim. "While an abuse of discretion in granting excuses for hardship might, in theory, 'upset the demographic balance of the venire' [citation], defendant cannot demonstrate systematic exclusion based upon the evenhanded application of a neutral criterion, such as hardship." (*People v. Howard*, *supra*, 1 Cal.4th at p. 1160; see also *People v. Morales* (1989) 48 Cal.3d 527, 549.) Our review of the evidence produced at the hearing discloses that the Director of Jury Services for the Los Angeles County Superior Court attributed the underrepresentation of Hispanics primarily to the failure of those persons to respond to jury summonses, and to language problems, not to any official response to hardship excuses. Requests for hardship excuses were dealt with according to a uniform, neutral system, and there was no evidence of any lack of neutrality in administering the system for granting these excuses. The other defense expert attributed most of the underrepresentation she discovered to poverty, but did not point to any lack of neutrality in the system for granting hardship excuses. Accordingly, the trial court properly rejected defendant's motion to quash the venire.

III. PENALTY ISSUES.

A. Failure to Present Case in Mitigation.

Defendant presented no evidence or argument to the jury at the penalty trial.

Defendant urges that when a defendant who is representing himself openly states that he will seek the death

penalty and refuse to introduce evidence in mitigation or argue to the jury, it is the obligation of the trial court to revoke the defendant's in propria persona status and appoint counsel to conduct the defense. In essence, he argues that the Eighth Amendment interest in a reliable penalty determination overcomes the defendant's Sixth Amendment interest in self-representation. (His argument, of course, contradicts the position he has taken with respect to the alleged interference with his right of self-representation at the guilt phase.)

Although it is true, as defendant argues, that defendant has no right to waive his automatic appeal from a death judgment (*People v. Massie* (1985) 40 Cal.3d 620, 624), or otherwise seek the state's assistance in committing suicide, it does not follow that a defendant's right of self-representation should be circumscribed as he suggests at the penalty trial. We have consistently held that the failure to present mitigating evidence at the penalty trial does not make the proceeding unreliable in constitutional terms. (*People v. Diaz* (1992) 3 Cal.4th 495, 566; *People v. Deere* (1991) 53 Cal.3d 705, 717; *People v. Lang* (1989) 49 Cal.3d 991, 1030; *People v. Bloom*, *supra*, 48 Cal.3d at p. 1228, and fn.9.) "[A] verdict is constitutionally reliable 'when the prosecution has discharged its burden of proof at the guilt and penalty phases pursuant to the rules of evidence and within the guidelines of a constitutional death penalty statute, the death verdict has been returned under proper instructions and procedures, and the trier of penalty has duly considered the relevant mitigating evidence, if any, which the defendant has chosen to present.'" (*People v. Diaz*, *supra*, 3 Cal.4th at p. 566, quoting *People v. Bloom*, *supra*, 48 Cal.3d at p. 1228.)

Applying this standard, we must reject defendant's claim and hold that the state's interest in assuring a reliable and fair penalty trial has been met.

Defendant argues that the public policy of the state against state-assisted suicide requires reversal of any death judgment entered after the defendant refuses to put on a case in mitigation and seeks the death penalty. However, we have rejected the claim that a court necessarily abuses its discretion in granting a motion for self-representation when the stated purpose of the motion is to obtain a verdict of death, despite the fundamental public policy against state-assisted suicide. (*People v. Bloom, supra*, 48 Cal.3d at p. 1220-1223.) The Sixth Amendment teaches that we should accord the competent defendant, even in a capital case, this much control over his destiny (*Id.* at pp. 1222-1223).¹⁴

Nor have we been convinced that self-representation under the circumstances defendant describes violates public policy. "First, defendant's proposed strategy by no means ensured the return of a death verdict. . . . [A] jury might well conclude that death was 'too good' for the defendant. . . . Second, if the trier of penalty has determined death to be the appropriate punishment, and the

¹⁴ Defendant casts as a separate argument the claim that the court abused its discretion when it failed to revoke his in propria persona status, and appoint counsel with directions to put on a case in mitigation. Our understanding of the high value placed on defendant's Sixth Amendment right of self-representation causes us to reject any such obligation. (See *People v. Clark, supra*, 50 Cal.3d at p. 617, *People v. Bloom, supra*, 48 Cal.3d at pp. 1222-1224; see also *People v. Howard, supra*, 1 Cal.4th at p. 1185; *People v. Lang, supra*, 49 Cal.3d at p. 1031.)

death judgment meets constitutional standards of reliability, the judgment cannot reasonably be regarded as the defendant's doing (other than by his commission of the capital crimes) or its execution as suicide. Finally . . . defendant's argument would effectively preclude death penalty prosecution of self-represented capital defendants who decline to present mitigating evidence, as there is no effective means to compel a pro se defendant to make an affirmative penalty defense." (*People v. Bloom, supra*, 48 Cal.3d at p. 1223.)

Defendant argues finally that the absence of a record of mitigating evidence prevents this court from carrying out its obligation to undertake a meaningful appellate review. Any deficiency of the record, however, is defendant's own doing, and he generally cannot be heard to complain of it here. (See *People v. Bloom, supra*, 48 Cal.3d at p. 1220; see also *People v. Clark, supra*, 50 Cal.3d at p. 618.) Appellate review obviously is limited to the evidence as the parties present it, and what is omitted always goes unreviewed. Any trial record has interesting silences; defendant chose not to defend at the penalty trial, and he cannot complain now that that omission inhibits our appellate review.

B. Weighing Aggravating and Mitigating Circumstances.

Defendant argues next that the standard jury instruction on weighing aggravating and mitigating circumstances, like the statute it is based on, created a presumption that death was the appropriate punishment,

and in fact, actually amounted to a directed verdict of death.

The court instructed in the language of section 190.3: "If you conclude that the aggravating circumstances outweigh the mitigating circumstances, you shall impose a sentence of death. However, if you determine that the mitigating circumstances outweigh the aggravating circumstances, you shall impose a sentence of confinement in the State Prison for life without the possibility of parole."

Defendant claims that section 190.3 is unconstitutional on its face because it requires a death verdict despite a juror's view that death is not the appropriate punishment. This court and the United States Supreme Court have rejected this facial attack on the statute. (*Boyde v. California* (1990) 494 U.S. 370, 376-377; *People v. Brown* (1985) 40 Cal.3d 512, 538-541, rev'd on other grounds *sub nom. California v. Brown* (1987) 479 U.S. 538.)

Similarly, we have rejected defendant's argument based on *Adamson v. Ricketts* (9th Cir. 1988) 865 F.2d 1011 that the statute creates a presumption in favor of death because every accused enters the penalty phase with a factor in aggravation – the circumstances of the crime, including the special circumstance finding. (*People v. Duncan* (1991) 53 Cal.3d 955, 978-979; *People v. Andrews* (1989) 49 Cal.3d 200, 230.) In *Adamson v. Ricketts*, *supra*, 865 F.2d 1011, "the accused bore the burden of demonstrating that death was not an appropriate penalty. In contrast, the instruction given here merely told the jurors that if they concluded the aggravating circumstances outweighed the mitigating circumstances, they were to impose a sentence

of death; but if they determined the mitigating circumstances outweighed the aggravating circumstances, they were to impose a sentence of confinement in the state prison for life without the possibility of parole." (*People v. Andrews*, *supra*, 49 Cal.3d at p. 230.) Our decision in *People v. Andrews*, *supra*, 49 Cal.3d 200 did not, contrary to defendant's contention, turn on the modifications of the standard instruction given in that case. As we have said in the past, section 190.3 requires the jury to make a determination whether aggravating circumstances "outweigh" the mitigating circumstances, and we interpret this language to direct the jury to apply normative standards in the weighing process. (*People v. Allen* (1986) 42 Cal.3d 1222, 1277; *People v. Brown*, *supra*, 40 Cal.3d at p. 541.) Thus, far from being compelled by any presumption in favor of the death penalty, "[t]he jury may decide, even in the absence of mitigating evidence, that the aggravating evidence is not comparatively substantial enough to warrant death." (*People v. Duncan*, *supra*, 53 Cal.3d at p. 979).¹⁵

We have acknowledged, of course, that the instruction quoted above has the potential to mislead the jury. (*People v. Brown*, *supra*, 40 Cal.3d at p. 544, fn. 17.) Assuming, without deciding, the continuing vitality of *Brown*

¹⁵ Defendant's reliance on *Odle v. Vasquez* (N.D.Cal. 1990) 754 F.Supp. 749 is unavailing; the court scanned our law without determining whether the aggravation factor contained in section 190.3, factor (a) contains a presumption in favor of death, and decided that a jury instruction telling the jury that the murder verdict was not in itself an aggravating factor dispelled any danger that the jury would consider itself bound by any such presumption.

(see *People v. Proctor* (1992) ___ Cal.4th ___ [typed maj. opn. at p. 67, fn. 12]), we examine the record to determine whether the jury may have been misled to defendant's prejudice. (*People v. Pinholster*, *supra*, 1 Cal.4th at p. 968; *People v. Hayes* (1990) 52 Cal.3d 577, 642.)

Here, nothing in the prosecutor's argument suggested that the death penalty was mandatory whether or not the jury found the penalty appropriate, nor did the prosecutor call for a mechanical process of counting rather than weighing the aggravating and mitigating factors. Nor did the prosecutor suggest that the existence of aggravating evidence under section 190.3, factor (a) made the death penalty mandatory or presumptively appropriate. The prosecutor told the jury that it must impose the death penalty "if there are more aggravating factors or if the aggravating factors *are more important* than the mitigating factors." The prosecutor spoke of the jury's duty to impose the death penalty but only in the context of a balancing process that resulted in a conclusion that the aggravating circumstances *outweighed* the mitigating circumstances. He argued, in fact, that death was the "appropriate" penalty and that the aggravating circumstances "overwhelmed" the mitigating circumstances. The prosecutor asked the jurors to examine their souls and "follow your own inclinations."

The defense, of course, did not focus the jury's attention on any fact in mitigation, or clarify the normative nature of the weighing process mandated by section 190.3. There was no evidence or argument presented on defendant's behalf. We have never concluded, however, that the absence of a case in mitigation requires reversal under *Brown*. (See *People v. Howard*, *supra*, 1 Cal.4th at pp.

1185, 1187-1189 [no mitigating evidence or defense argument]; *People v. Sanders*, *supra*, 51 Cal.3d at pp. 521-525 [same]; see also *People v. Diaz*, *supra*, 3 Cal.3d at p. 567 [no mitigating evidence, court trial]; *People v. Bloom*, *supra*, 48 Cal.3d at p. 1230 [same, jury trial].) This was not a case like *People v. Crandell* (1988) 46 Cal.3d 833, 884-885, in which the prosecutor misled the jury regarding its sentencing discretion and we reversed, relying in part on defendant's failure to present any argument to the jury. There, rebuttal was needed to dispel the misconceptions fostered by the prosecutor. (See also *People v. Milner* (1985) 45 Cal.3d 227, 253-256.) Here, by contrast, the prosecutor did not mislead the jury, and we see no reasonable likelihood that the jury was in fact misled regarding the nature of its sentencing discretion. (*People v. Johnson* (1992) 3 Cal.4th 1183, 1250; *People v. Clair*, *supra*, 2 Cal.4th at p. 663.)

C. Sympathy and Mercy.

Defendant argues that the jury may have construed the instructions, the arguments of the prosecutor and the absence of any evidence in mitigation to mean that they could not consider sympathy for the defendant in making the penalty determination.

The court was not under a duty to instruct *sua sponte* that sympathy for the defendant may be considered in selecting the penalty. (*People v. Williams* (1988) 44 Cal.3d 883, 955.) The court gave the expanded instruction on factor (k) of section 190.3 recommended in *People v. Easley* (1983) 34 Cal.3d 858, 878, footnote 10. The instruction is

"sufficient to advise the jury of the full range of mitigating evidence, and nothing more is required." (*People v. Edwards* (1991) 54 Cal.3d 787, 841-842; see also *People v. Clark, supra*, 3 Cal.4th at pp. 163-164.) As for the absence of any evidence in mitigation, this was defendant's tactical choice as counsel.

Our reading of the record discloses that the prosecutor said nothing to suggest that sympathy for the defendant based on any evidence in mitigation was, as a theoretical matter, inappropriate in making the penalty determination. He argued that no sympathy was due to the defendant, but not that sympathy or mercy were inappropriate considerations under the law.

Defendant claims that when the court delivered the guilt phase instructions, including the standard antisympathy instruction, the jury would understand that these instructions applied to the penalty phase because the court told the jury these were the instructions that applied to the case. We have held, however, that even if this instruction warning against reliance on " 'mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling' " is actually delivered with the penalty phase instructions, no error occurs. (*People v. Clark, supra*, 3 Cal.4th at p. 163; *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1225.) "Unless misled, a reasonable jury will understand that this instruction does not foreclose compassionate evaluation of the mitigating evidence, but warns only against 'factually untethered' emotion, bias, or outside pressure." (*People v. Gonzalez, supra*, 51 Cal.3d at p. 1225.)

D. Prosecutorial Misconduct.

Defendant claims the prosecutor committed misconduct in closing argument to the jury by commenting on defendant's failure to express remorse or admit responsibility, and by suggesting that the absence of mitigating factors was a factor in aggravation. Respondent argues that defendant waived the claims by failing to object to any misconduct at trial; defendant argues that supporting authority had not been decided at the time of his trial, so failure to object should be excused. Generally, we do deem such objections waived for failure to object. (See e.g., *People v. Allison* (1989) 48 Cal.3d 879, 902-903.) In any event, we reject the claim on the merits. The prosecutor argued that there was no reason to extend mercy to defendant because: "There wasn't a glimmer of remorse or anything we would identify as a human thought or feeling or anything in every incident we see of this man." Such a comment on defendant's remorselessness during and after the commission of the crime would not be understood, contrary to defendant's argument, as a comment on a nonstatutory factor in aggravation. (*People v. Clair, supra*, 2 Cal.4th at p. 686; *People v. Gallego* (1990) 52 Cal.3d 115, 197; *People v. Carrera* (1989) 49 Cal.3d 291, 339.) Nor is it reasonably likely the jury would have understood the prosecutor to argue that defendant's failure to confess to the charged crimes was a ground for imposing the death penalty. (See *People v. Clair, supra*, 2 Cal.4th at p. 686; *People v. Miranda* (1987) 44 Cal.3d 57, 112.) The prosecutor did remark that defendant had not requested forgiveness or admitted responsibility, but this was clearly in the context of the evidence of defendant's

string of prior convictions for violent sex offenses, not his failure to confess to the charged crimes.

Defendant argues in a footnote that any comment on defendant's lack of remorse violated the Eighth Amendment because it interjected a subjective and speculative matter into a proceeding that must be reliably based on reason. (See *Gardner v. Florida* (1977) 430 U.S. 349, 358; *Woodson v. North Carolina* (1976) 428 U.S. 280, 305.) It is self-evident that the Eighth Amendment, with its requirement of a reliable fact-finding process, however, does not prevent the jury from evaluating subjective states of mind. The question of the defendant's remorse calls for no more speculation than the question whether, in unadjudicated prior offenses, he had the requisite level of criminal intent, or the question whether he was suffering from extreme mental or emotional disturbance, matters that are clearly within the jury's competence.

We also reject the claim that the prosecutor argued improperly that the absence of any factor in mitigation was itself a factor in aggravation. There is not a reasonable likelihood the jury would have understood the prosecutor to be arguing as defendant suggests. Rather, the prosecutor simply argued that none of the statutory factors in mitigation was present. Thus, for example, he argued that defendant did not act under extreme mental disturbance, but in a cold and calculating manner. The prosecutor was entitled to draw on the evidence to argue that a statutory factor in mitigation was not present. (See *People v. Hardy* (1992) 2 Cal.4th 86, 211.)

E. Double-counting Aggravating Factors.

Defendant contends the jury improperly was permitted to rely on duplicative special circumstance findings as matters in aggravation. He claims that the rape-murder special-circumstance finding and the special circumstance finding of a murder in the course of a lewd act on a child actually described the same conduct, so that it was impermissible for the jury to rely on each as a separate aggravating factor under factor (a) of section 190.3.

We reject the premise. The rape and lewd-act special-circumstance findings required different elements of proof and could be separately considered. (*People v. Griffin* (1988) 46 Cal.3d 1011, 1030 [lewd act on a child not a lesser included offense of rape].) Defendant's entire violent course of conduct was of course relevant to the penalty determination. (*People v. Melton* (1988) 44 Cal.3d 713, 765-769.) In *People v. Melton, supra*, 44 Cal.3d 713, we explained that it was legitimate for the jury to infer that the defendant was more culpable because he not only robbed the victim but also committed a burglary in order to accomplish the robbery and murder. Each of the non-capital offenses involved violations of different interests of the victim, and were separately relevant. The same can be said of the two sex offenses in this case. (See also *People v. Proctor* (1992) ___ Cal.4th ___ [typed maj. opn. at pp. 66-68; *People v. Mickey, supra*, 54 Cal.3d at pp. 691-692; *People v. Sanders, supra*, 51 Cal.3d at p. 529.)

F. Automatic Motion for Reconsideration.

Defendant contends the court erred in considering evidence of the impact of the crime on the victim in ruling on the automatic motion for modification of the penalty verdict. Defendant complains that the court invited the victim's mother to speak at the hearing on the motion, and in ruling on the motion, considered her statements about the youth of the victim and her outrage at the defendant.

Defendant relies on *Booth v. Maryland* (1987) 482 U.S. 496; that authority has been largely overruled in *Payne v. Tennessee* (1991) 501 U.S. ____ [115 L.Ed.2d 720]. (*People v. Thomas* (1992) 2 Cal.4th 489, 535.) The impact of the crime on the family of the victim is a circumstance of the crime that is relevant to the penalty determination under section 190.3 factor (a). (*People v. Thomas, supra*, at p. 535.) To the extent that the victim's mother spoke of matters still barred under *Booth* and *Payne*, that is, "a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence" (*Payne v. Tennessee, supra*, 501 U.S. ____ [115 L.Ed.2d 720, 739] fn. 2) we note that "the broad holding of *Booth* . . . does not extend to proceedings relating to the application for modification of a verdict of death under section 190.4(e)." (*People v. Benson* (1990) 52 Cal.3d 754, 812.) Any error in considering evidence not before the jury was nonprejudicial. (See § 190.4, subd. (e); *People v. Lewis* (1990) 50 Cal.3d 262, 287.) We see no evidence the court was overcome by emotion as it considered the evidence. In the absence of evidence to the contrary, we assume the court is not

affected by such extraneous evidence. (*People v. Fauber, supra*, 2 Cal.4th at p. 866.)

Defendant also claims the court erred in ruling on the motion because it double-counted aggravating factors, treated the absence of mitigating evidence as a factor in aggravation, and considered nonstatutory aggravating factors.

It is true that the court pointed to the circumstances of the charged capital crimes in aggravation twice, once under factor (a) and once under factor (b) of section 190.3. This was error. (*People v. Kimble* (1988) 44 Cal.3d 480, 505.) The error, however, was harmless, as there is no indication the court arrived at its determination by counting up the aggravating factors. (See *People v. Karis* (1988) 46 Cal.3d 612, 652-653.)

The court's reference to defendant's age was not error. "Chronological age, as such, is neither aggravating nor mitigating, but age-related inferences relevant to the choice of penalty may be argued. . . . One such permissible inference is that the defendant is 'old enough to know better.'" (*People v. Clark, supra*, 3 Cal.4th 41, 170.) This was the import of the court's comment.

Contrary to defendant's claim, the court did not treat absence of evidence of extreme mental disturbance as a circumstance in aggravation. The court simply commented that defendant's cold calculation during the crimes indicated that there had been no mental disturbance. The inference to be drawn from this comment is that the court found no evidence in mitigation under factor (d) of section 190.3.

Defendant claims that the court also considered the circumstances of the crime in aggravation under section 190.3, factor (k), a factor in mitigation. The court said: "And any other circumstances [that] extenuate the gravity of the crime even though [they are] not a legal excuse for the crime. I considered that. I have considered the nature of the crime, the age of the victim, the circumstances of the victim's death. And I have considered, Mr. Stansbury, on the other side of this is the fact that you are clearly a man with some potential. [¶] You certainly had a potential at one time in your life. You're not a stupid man. You have a basic intelligence. [¶] There are multiple tragedies. The ultimate tragedy, of course, is what happened to Robyn Jackson. [¶] The other tragedy is waste of what could have been a good mind, and that was yours, Mr. Stansbury. [¶] I have considered those and contributions that you might make or could have made."

Our reading of the record convinces us that the court referred to the circumstances of the crime as the main counterweight to the mitigation it identified under section 190.3, factor (k), that is, defendant's intelligence and sadly wasted potential. Thus the court did not indicate that the circumstances of the crime were to be considered in aggravation under both factor (a) and factor (k), but that they were the counterweight to the mitigation identified under factor (k). Further, the record in no way suggests that the court simply counted the factors in aggravation and mitigation and mechanically arrived at the result; rather, the court weighed the comparative value of the aggravating and mitigating evidence.¹⁶

¹⁶ Defendant also argues that the court could not consider the age of the victim under any of the statutory factors in

G. Miscellaneous Challenges to Death Penalty Law.

Defendant challenges this state's capital sentencing scheme on several constitutional grounds. He claims that the statute and jury instructions fail to provide the sentencer with constitutionally sufficient guidance because they fail to identify for the jury what factors are aggravating and what mitigating. This claim has been rejected repeatedly. (*People v. Raley*, *supra*, 2 Cal.4th at p. 919, and cases cited.) He also relies on *Stringer v. Black* (1992) 503 U.S. ____ [117 L.Ed.2d 367] to support the claim that section 190.3 is void for vagueness because it fails to guide the jury in determining whether certain factors are aggravating or mitigating. He also claims more specifically that section 190.3, factors (a) and (i) provide particularly inadequate guidance to the jury. We have recently rejected identical claims. (*People v. Zapien* (1993 ____ Cal.4th ____ [typed circulating opinion at pp. 83-84]; *People v. Proctor*, *supra*, ____ Cal.4th ____ [typed maj. opn. at p. 70]; *People v. Tuilaepa* (1992) ____ Cal.4th ____ [typed maj. opn. at pp. 35-37]; *People v. Noguera* (1992) ____ Cal.4th ____ [typed maj. opn. at pp. 72-73].)

Defendant claims that his state and federal constitutional rights were violated because the statute and instructions failed to direct the trier of fact to find beyond a reasonable doubt: (a) that the aggravating circumstances are true; (b) that the aggravating factors outweigh

aggravation. However, the victim's age is certainly cognizable under section 190.3, factor (a), which permits the trier of fact to consider the circumstances of the offense. (See, e.g., *People v. Raley* (1992) 2 Cal.4th 870, 915-916.)

the mitigating factors; and (c) that death is the appropriate sentence. We disagree. (*People v. Duncan, supra*, 53 Cal.3d at p. 979.) Nor do we agree that the statute is unconstitutional because it fails to direct the jury to make a finding as to what aggravating circumstances were found true. (*People v. Sully* (1991) 53 Cal.3d 1195, 1251-1252, and cases cited.) We have consistently rejected his claim that the statute is unconstitutional because it fails to require jury unanimity on the aggravating factors warranting death. (*People v. Breaux* (1991) 1 Cal.4th 281, 321, and cases cited.)

We have also rejected the claim that the relitigation at the penalty trial of the facts underlying a defendant's prior convictions violates due process or the Eighth Amendment, or double jeopardy. (*People v. Johnson, supra*, 3 Cal.4th at pp. 1240-1242; *People v. Visciotti* (1992) 2 Cal.4th 1, 71.)

There is no constitutional requirement that the court inform the jury that the punishment of life in prison without possibility of parole will actually be carried out. (*People v. Pinholster, supra*, 1 Cal.4th at p. 974; *People v. Bonin* (1988) 46 Cal.3d 659, 698.) Nor must the jury be instructed not to consider prior criminal activity under factor (b) of section 190.3 unless it unanimously finds the activity has been proven. (*People v. Pinholster, supra*, 1 Cal.4th at p. 974, and cases cited.) Finally, the death penalty statute is not unconstitutional under *Godfrey v. Georgia* (1980) 446 U.S. 420, 427 or *Furman v. Georgia* (1972) 408 U.S. 238 for failing to provide for intercase proportionality. (*People v. Mincey* (1992) 2 Cal.4th 408, 476; *People v. Visciotti, supra*, 2 Cal.4th at p. 77; *People v. Adcox* (1988) 47 Cal.3d 207, 274.)

IV.

The judgment is affirmed in its entirety.

COPY

PEOPLE v. STANSBURY

S004697/Crim. 24685

CONCURRING OPINION BY KENNARD, J.

The trial court in this case refused to permit the self-represented defendant to stand mute during the trial. In this respect, the case is indistinguishable from *People v. Clark* (1992) 3 Cal.4th 41, in which this court held that a trial court may terminate self-representation if the pro se defendant's announced intention to stand mute is "part of a deliberate course of conduct designed to cause as much disruption as possible." (*Id.* at p. 116.) I thought this court was wrong (see *Id.* at pp. 174-180 (dis. opn. of Kennard, J.)), and I continue to think so. But repetition of dissenting views is rarely justified, and therefore I "yield to the obligation . . . to live with the law as it has been stated." (Traynor, *Some Open Questions on the Work of State Appellate Courts* (1957) 24 U.Chi.L.Rev. 211, 219; but see also Brennan, *In Defense of Dissents* (1986) 37 Hastings L.J. 427, 436-437.) On the basis of stare decisis, I concur in the majority opinion.

KENNARD, J.

COPY

PEOPLE v. STANSBURY

S004697

CONCURRING AND DISSENTING OPINION
BY MOSK, J.

I have viewed with growing concern the capital cases under our review in which the defendant has been permitted to represent himself. I have become convinced that

because of the interest of society in obtaining a reliable verdict at the guilt and penalty phases of a capital trial, the defendant should not be permitted to waive counsel and represent himself if there is the slightest doubt of his competence to undertake this awesome task in a way that discharges society's interest, as well as his own. (*People v. Clark* (1992) 3 Cal.4th 41, 174 (dis. opn. of Mosk, J.).)

In this case, the defendant appears to be an obstreperous and cunning fool. He made it clear that his original intention was to defend in this complex circumstantial case by deliberately pointing to his prior convictions for violent sex crimes and then arguing that he had been framed because of his record. His assistant counsel and the court urged him in strong terms to abandon this strategy, since a reference to his egregious record at the guilt trial would spell his doom; any doubt the jury had about the strength of the prosecutor's case would likely evaporate. In fact, defendant did not ultimately employ this strategy, and assistant counsel maintained a hand in the defense.

Defendant now complains that the court deprived him of the right to present the defense in his own way. My years as a trial judge, an Attorney General and nearly three decades on this court have convinced me that a defendant facing the gas chamber possesses no objectivity and little competence to act as his own counsel. Here, however, the trial court properly tempered the defendant's ability to commit judicial suicide at the guilt trial by urging him to listen to assistant counsel, and by threatening to revoke his pro se status when the defendant petulantly declared he would stand mute. Because I see the hand of the court and counsel in the presentation

of the defense, I would not, as I have in other cases, urge the reversal of the guilt verdict. (Compare *People v. Clark*, *supra*, 3 Cal.4th at p. 174 (dis. opn. of Mosk, J.).)

The penalty judgment, however, should be reversed.

Defendant is a manipulator who decided, contrary to the advice of his assistant counsel, to present no evidence or argument in mitigation at the penalty trial. No mitigating evidence had previously been presented at the guilt trial. Throughout the trial defendant expressed the intention to seek the death penalty if the jury found him guilty. He bitterly chastised assistant counsel and his investigators for pursuing any case in mitigation in preparation for the penalty trial. At the 11th hour he sought a 4- to 6-week continuance so that he could contact a witness to a 20-year-old crime and seek his admission that he, the witness, had committed the sex offenses of which defendant had been convicted. Defendant still maintained that he was seeking the death penalty, but wanted the evidence to be accurate. The trial court properly denied the motion for continuance; defendant had more than two years to find the witness. The record is absolutely clear that defendant stubbornly prohibited the presentation of any evidence in mitigation at the penalty trial. There is no indication that defendant was mentally impaired at the time of trial.

Having no sympathy with the efforts of the defendant to manipulate the legal system, and no question that the prosecutor, assistant counsel, defendant's investigators and the court made every effort to conduct a fair penalty trial in the face of defendant's obduracy, nevertheless I still would reverse the penalty verdict.

We should be concerned, not merely with the defendant, who appears on this one-sided record to be a despicable human being, but with the interest of society. It is society that is being asked to forfeit his life. I cannot find that our social interest in a reliable penalty verdict is safeguarded in a case in which none of the available evidence and no arguments are presented on defendant's behalf. (U.S. Const., Eighth Amend.; Cal. Const., art. I, § 17; *People v. Deere* (1985) 41 Cal.3d 353, 360-368; see also *People v. Diaz* (1992) 3 Cal.4th 495, 577 (conc. & dis. opn. of Mosk, J.); *People v. Howard* (1992) 1 Cal.4th 1132, 1197 (conc. & dis. opn. of Mosk, J.); *People v. Sanders* (1990) 51 Cal.3d 471, 531-533 (dis. opn. of Mosk, J.); *People v. Clark* (1990) 50 Cal.3d 583, 639-641 (conc. & dis. opn. of Mosk, J.); *People v. Lang* (1989) 49 Cal.3d 991, 1059-1062 (conc. & dis. opn. of Mosk, J.); *People v. Bloom* (1989) 48 Cal.3d 1194, 1236-1245 (conc. & dis. opn. of Mosk, J.); *People v. Williams* (1988) 44 Cal.3d 1127, 1158-1161 (conc. & dis. opn. of Mosk, J.).)

There is no question that some mitigating evidence was available and could have been presented. The record reveals that assistant counsel and defense investigators had obtained potential mitigating evidence from family members, friends and former employers who were available to say "good things" about defendant. Assistant counsel told the court at the hearing on the automatic motion for modification that "Mr. Stansbury did have a very very hard childhood, a rough childhood where he was not living with a parent or parents for a long period of time. [¶] He was incarcerated and confined in the juvenile institutions from a very very young age. [¶] He has suffered some considerable amount of ill health,

including the loss of his leg. [¶] He has a great deal of bitterness against people because of those early years."

It is entirely defendant's fault that no evidence or argument was presented to the jury, but the consequence of his machinations was that 12 conscientious citizens had to decide whether he should live or die without being provided any reason to extend society's gift of mercy. While I agree with the majority that the prosecutor did not exploit ambiguity in the jury instructions in a way that would mislead the jury, the instructions themselves really made no sense in the context of this case. The references to weighing the aggravating against the mitigating factors, and to the mitigating evidence that defendant might proffer, were essentially meaningless because of the lack of a single piece of mitigating evidence. No jury should be placed in such an untenable position, and no death judgment based on such an unbalanced proceeding should be carried out.

I would remand for a new penalty trial at which defendant would be required to be represented by counsel who would have full control over the development and presentation of a case in mitigation. (See *People v. Clark, supra*, 50 Cal.3d at p. 641 (conc. & dis. opn. of Mosk, J.).)

MOSK, J.

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

THE PEOPLE,	)	S004697
Plaintiff and Respondent,	)	(Super. Ct. No.
v.	)	A529247)
ROBERT EDWARD STANDSURY,)	
Defendant and Appellant.)	

MODIFICATION OF OPINION

THE COURT:

The opinion of the court herein, appearing at 4 Cal.4th 1017, is modified as follows:

At page 1032, line 29, the phrase "large person" is substituted in place of the phrase "big man."

This modification does not affect the judgment.

No. CR24685
S004697

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA
IN BANK

THE PEOPLE, Respondent
v.
ROBERT EDWARD STANSBURY, Appellant

Petition for rehearing DENIED.

Opinion modified.

Filed May 26, 1993

/s/ Illegible
Chief Justice

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

REMITTITUR

TO THE SUPERIOR COURT,
COUNTY OF LOS ANGELES

THE PEOPLE
RESPONDENT

VS.

STANSBURY, ROBERT EDWARD
APPELLANT

SUPREME COURT NUMBER: S004697 (Crim. 24685)
SUPERIOR COURT NUMBER: A 529247

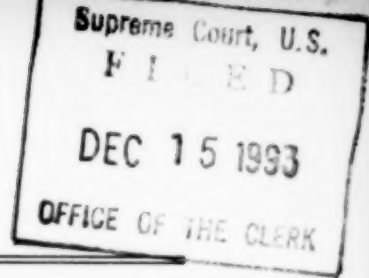
I, ROBERT F. WANDRUFF, CLERK OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA, DO HEREBY
CERTIFY THAT THE ATTACHED IS A TRUE COPY OF
AN ORIGINAL JUDGMENT ENTERED IN THE ABOVE-
ENTITLED CAUSE ON MONDAY, THE 8TH DAY OF
MARCH, 1993.

WITNESS MY HAND AND THE
SEAL OF THE COURT, WEDNES-
DAY, THE 26TH DAY OF MAY,
1993.

ROBERT F. WANDRUFF,
CLERK

BY /s/ M. Jameson
DEPUTY

7
No. 93-5770



In the
Supreme Court of the United States
October Term, 1993

ROBERT EDWARD STANSBURY,
Petitioner,
vs.

STATE OF CALIFORNIA,
Respondent.

On Writ Of Certiorari
To The Supreme Court Of The
State Of California

BRIEF OF PETITIONER

ROBERT M. WESTBERG*
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QUESTION PRESENTED

May a trial court determine that a criminal defendant is not "in custody" for *Miranda* purposes on the basis of police officers' subjective and undisclosed conclusions that they did not consider the defendant a "suspect"?

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OPINION BELOW

The opinion of the Supreme Court of the State of California is reported at 4 Cal.4th 1017, 17 Cal.Rptr.2d 174, 846 P.2d 756 (1993) and is reprinted in the Joint Appendix ("J.A.") at pages 438-511. That court's May 26, 1993 orders modifying its opinion and denying rehearing are reported at 5 Cal.4th 294D (1993) and are reprinted in the Joint Appendix at pages 512-13.

JURISDICTION

The judgment of the California Supreme Court affirming petitioner's death sentence was entered on March 8, 1993. That court modified its opinion and denied rehearing on May 26, 1993. The petition for writ of certiorari was timely filed on August 24, 1993, within 90 days of that date. 28 U.S.C. § 2101(c); Sup. Ct. Rules 13.1, 13.4. This Court has jurisdiction to review the judgment and opinion by writ of certiorari pursuant to 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V, provides, in relevant part:

No person shall . . . be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . .

United States Constitution, Amendment XIV, Sec. 1, provides, in relevant part:

No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner Robert E. Stansbury was convicted and sentenced to death for the kidnapping, rape and first degree murder of a ten-year-old girl, Robyn Jackson.¹ Clerk's Transcript ("C.T.") 1189. At his trial, statements allegedly made by petitioner during police questioning, without benefit of *Miranda* warnings, in the Pomona,

¹ Petitioner was convicted under California's 1978 death penalty law, which provides that the sentencer is to weigh aggravating and mitigating factors in making its penalty determination. See Cal. Penal Code § 190.3(a)-(k). On December 6, 1993, this Court granted certiorari in two cases that raise constitutional challenges to that law, *Tuilaepa v. California*, 93-5131, and *Proctor v. California*, 93-5161. The petitioners in those cases argue that the sentencing factors set forth in the California statute are unconstitutionally vague and thus fail adequately to channel the sentencer's discretion. In the California Supreme Court, petitioner unsuccessfully raised a virtually identical challenge to the California sentencing scheme. See J.A. 505, App. Opn. Br. 241-42. In the event that this Court decides the issue presented by the instant case adversely to petitioner, petitioner requests the Court to hold this case pending disposition of *Tuilaepa* and *Proctor*.

California, jail on the night after the murder were admitted in the prosecution's case in chief. Reporter's Transcript ("R.T.") 8293-301, 8399-402. The statements "were not merely used to impeach [petitioner's] trial testimony, but as substantive evidence of his guilt." J.A. 470. The jury was instructed that it could rely on the statements to show petitioner's consciousness of guilt. R.T. 11174-75.

On petitioner's automatic appeal, the California Supreme Court affirmed the convictions and sentence of death in all respects, concluding that petitioner's interrogation at the jail was not conducted in violation of *Miranda* because petitioner was not "in custody" when the statements were made. J.A. 507, *see* J.A. 468-77. Justice Kennard, indicating that she disagreed with the majority's view on an issue having to do with petitioner's right of self-representation, concurred in affirming petitioner's convictions solely "on the basis of stare decisis." J.A. 507. Justice Mosk dissented from the affirmance of the death sentence. J.A. 507.

Following the denial of rehearing by the California Supreme Court (J.A. 513), petitioner filed in this Court a petition for a writ of certiorari. On November 1, 1993, this Court granted the writ.

A. Statement of facts.

1. The initial police investigation.

Ten-year-old Robyn Jackson disappeared from the Geddes School playground near her home in Baldwin Park, California, at about 6:15 p.m. on September 28, 1982. J.A. 439. At about 1:30 a.m. the next morning, police

found her body in a drainage channel in Pasadena, several miles away. J.A. 440. Police had been called to Pasadena by a witness who reported seeing a motorist stop and throw something into the channel. J.A. 440.

Sergeant Thomas Johnston, a homicide detective with the Los Angeles County Sheriff's Department, began investigating the case at approximately 3:30 a.m. on September 29. J.A. 93. He learned from the police at the scene where the body was found that the car from which the body was thrown was a late 1960's or early 1970's mid-sized American sedan, turquoise in color. J.A. 93. The person dropping the body was described as a male adult, either large-framed or tall. J.A. 93-94.

From Baldwin Park police, Sergeant Johnston learned that Robyn had disappeared shortly after leaving her home after dinner around 6:15 p.m. J.A. 94. Sergeant Johnston spent the entire day of September 29 investigating the crime, including canvassing the neighborhood twice and interviewing witnesses. J.A. 96, 106. During that day he was informed by Robyn's mother, Sharon Sanchez, that Jeremy Ramos, a playmate of Robyn's who had eaten dinner at Robyn's house, had told Ms. Sanchez that Robyn had gone out after dinner for a "prearranged" meeting with a white man with red hair and a bushy red beard who drove a white ice cream truck (a description which applied to petitioner). J.A. 102-03, 168, 176-77. Sergeant Johnston also learned during the day of September 29 that this ice cream truck driver had been "particularly friendly" with Robyn in the past. J.A. 103.

Sergeant Johnston testified that Jeremy told the police that he had seen Robyn talking to the white ice

cream truck driver before dinner (about 5 p.m.) and that he had seen her after dinner near a blue ice cream truck. J.A. 169-70. A young man in the neighborhood, Donald Helmer, told Sergeant Johnston that he saw Robyn talking to a black man driving a blue ice cream truck before dinner at about 5:15 p.m. J.A. 103, 144.

Sergeant Johnston considered it possible that Robyn had been abducted by an ice cream truck driver, and he determined to contact petitioner and another ice cream man named Yusuf, known to have been in the neighborhood on that day. J.A. 103-04, 107, 130.²

Late in the afternoon of the 29th, Sergeant Johnston asked for a "rap sheet" on petitioner and Yusuf. J.A. 107. Johnston testified that the information he received in response did not reveal a criminal history for either person. J.A. 107-08, 129. In addition, Sergeant Johnston sent out two advance units to verify petitioner's and Yusuf's addresses and to look for turquoise cars in the vicinity. J.A. 68.

At least seven officers went to Yusuf's apartment. J.A. 33-34, 46, 215-16, 421. (Four of the officers had gone ahead as advance units in two cars and "stake[d] out" the apartment until Sergeant Johnston and others arrived. J.A. 217.) A woman at the apartment told Sergeant Johnston that Yusuf was not there. J.A. 111-12. Sergeant Johnston felt she was lying and directed some of the officers

² Sergeant Johnston obtained petitioner's name from a Baldwin Park police officer who had been called to investigate a minor accident about 5:30 p.m. on September 28 when petitioner backed his truck into a fence not far from the Geddes School playground. J.A. 105, 108.

into the apartment. J.A. 112. The police searched each room and found Yusuf, according to one of the officers, "hiding under a bed." J.A. 48-50. Yusuf was "transported to the Pomona Police Department" for questioning. J.A. 51. Four officers in two cars were then dispatched to pick up petitioner. J.A. 52.

2. Petitioner's encounter with the police.

Shortly before 11 p.m. on September 29, four Baldwin Park police officers in two cars arrived at the trailer park where petitioner was staying. J.A. 42, 52. The officers had been told that petitioner was "wanted for questioning" in connection with a murder. J.A. 214, 219. All the officers drew their guns, fanned out around the doorway, and one of them, Officer Lee, knocked on the door. J.A. 52-55, 63-65, 207-14, 380-84. When petitioner answered, Lee asked him to identify himself and, after petitioner had done so, advised petitioner that they were investigating a homicide to which he was possibly a witness. J.A. 56, 384-85. The officer requested that petitioner accompany them to the Pomona, California, police station for questioning. J.A. 35-37, 56-57, 384-85. Petitioner was told that if he did not have transportation the police would provide it. J.A. 36, 56. No witness testified that petitioner was offered any choice whether to go to the police station. Petitioner agreed to accompany the officers. J.A. 37, 57.³

³ Officer Lee testified:

Q. . . . How did you ask him to come to the station?

A. I asked him if he would accompany me to the Pomona Police Department, and if he didn't have transportation I would provide it for him.

Q. And then what did he respond to that?

Officer Lee and another officer drove petitioner to the police station in Officer Lee's undercover police car, followed by the other two officers in a marked patrol car. J.A. 31, 37, 57, 385. During the ride to the police station, petitioner was asked, among other things, when he last drove his ice cream truck in Baldwin Park. J.A. 58-61.

3. The location and manner of questioning.

At the police station, the officers brought petitioner behind the station to the "sally port" and through the electronically controlled steel rolling gates that provided access into the jail. J.A. 61-62, 108-09, 400-01. All four officers then escorted petitioner through locked steel doors and into an interview room in the secured area of the jail itself. J.A. 62, 259-60, 401-04. This room, located directly across from the jail booking counter, was normally used for questioning suspects and persons in custody. J.A. 109-10, 115, 259-60, 401-02, 405-06. The door to this room could be opened only with a key. J.A. 260, 404. Three officers remained with petitioner while the fourth went upstairs to notify Sergeant Johnston. J.A. 40, 62-63. Johnston, who had just started to question the other ice cream truck driver, Yusuf, immediately broke off the questioning and came down to question petitioner. J.A. 73, 110, 320-21.

A. He was very cooperative, he said he didn't have transportation.

Q. And then you indicated you would drive him down in your unit?

A. Yes.

J.A. 56-57.

Johnston interrogated petitioner in the presence of a second officer, Detective Bell of the Baldwin Park Police Department. J.A. 74, 116. The questioning was not taped or otherwise recorded (J.A. 233-34), although Sergeant Johnston later wrote up a report of the interrogation (see J.A. 115, 250). Neither officer informed petitioner of his *Miranda* rights. J.A. 74, 233. There was no evidence that the officers informed petitioner that he could refuse to answer questions or that he was free to leave.

The questioning covered petitioner's movements and activities throughout the entire previous day, beginning with petitioner's travel from Pomona to Baldwin Park in the morning, the route he took and how he worked Baldwin Park. J.A. 75-77, 118, 130-31. Johnston also asked petitioner ~~who~~ he lived with and about cars to which he had access. J.A. 78, 86. In response to Johnston's questions, petitioner described how he had gotten to the neighborhood of the Geddes School and what he had done there. J.A. 76-77, 117-18, 130-31. He acknowledged that he had been in that neighborhood around the time Robyn disappeared. J.A. 76-77. Petitioner also described his route home from Baldwin Park, noting that he had taken a circuitous route to avoid certain hills because his ice cream truck had developed engine trouble, and that he had stopped for gas at a station on Arrow Highway. J.A. 77, 120-21, 250, 285-86.

Petitioner informed Johnston that he had arrived back at his trailer around 9:00 p.m., had dozed off watching television, and was awakened by a roommate, Loren Lucas, around midnight. J.A. 77. Petitioner stated that he had borrowed Lucas' car to go to a restaurant and had returned to the trailer at a late hour. J.A. 78.

Johnston then showed petitioner a photograph of Robyn. J.A. 81, 124-25, 133-35. Petitioner acknowledged that he had seen and spoken to her near the Geddes School around 6:00 p.m. on September 28. J.A. 81, 83, 134, 155. Johnston asked petitioner to describe his activities and route after that point and to describe other people he had seen on the street. J.A. 83-86, 134-35, 155-56. Petitioner did so, going "back over some of the day in more detail." J.A. 134.

After 20 to 30 minutes of questions, at "the end of the interview," Johnston asked petitioner to describe the car he had borrowed from Lucas around midnight. J.A. 133, 87, 124, 232, 264. Petitioner described Lucas' car as an older, turquoise, American-made model. J.A. 87, 138. According to Johnston, petitioner then became a "suspect" in Johnston's mind, since petitioner's description of the Lucas car matched the description of the car from which Robyn's body had been thrown. J.A. 87-89, 125-26, 137-39, 153.

Johnston then asked petitioner if he had a prior criminal record. J.A. 87, 137-39. When petitioner replied that he did and was presently on parole, Johnston went upstairs to inform the other homicide officers assigned to the case. J.A. 88-90. The officers returned to the interview room and read petitioner his *Miranda* rights. J.A. 91-92, 141. Petitioner asked for an attorney and was immediately arrested. J.A. 91-92, 141, 270.

B. The proceedings below.

Before trial, petitioner filed a motion to exclude his statements at the jail and any evidence discovered as a direct result of those statements. J.A. 3, 251-52. Under the law and procedure in effect at the time of the suppression hearing, the prosecution had the burden of proving that defendant was not in custody at the time of his statements and that his statements were admissible. *People v. Sam*, 71 Cal.2d 194, 201-02, 454 P.2d 700, 703-04, 77 Cal.Rptr. 804, 807-08 (1969); see also *Green v. Superior Court*, 40 Cal.3d 126, 134, 707 P.2d 248, 252, 219 Cal.Rptr. 186, 190 (1985), cert. denied, 475 U.S. 1087 (1986). A two-day evidentiary hearing was held at which the officers described the circumstances under which petitioner was picked up and interrogated. See J.A. 21-434. Petitioner did not testify. The trial court determined that, because petitioner had not become the "focus" of suspicion in the minds of the interrogating officers until he described the turquoise car, he was not "in custody" for *Miranda* purposes before that time. J.A. 433. Accordingly, the court excluded only those statements petitioner made after he described the car. J.A. 433, 435.

At trial, all but the excluded portion of petitioner's statements during the September 29 interrogation were admitted in the prosecution's case in chief. R.T. 8293-301, 8399-402. As the California Supreme Court pointed out, "[t]he statements were inconsistent with other prosecution evidence; they were not merely used to impeach

[petitioner's] trial testimony, but as substantive evidence of his guilt." J.A. 470.⁴

In affirming petitioner's conviction, the California Supreme Court held that the trial court had properly refused to suppress petitioner's statements made during his questioning at the jail and that the trial court's factual finding as to when petitioner became a suspect in the minds of the interrogating officers was supported by substantial evidence. J.A. 470-77.⁵

SUMMARY OF ARGUMENT

To dispel the compulsion inherent in custodial surroundings, and thereby reduce the risk of compelled self-incrimination, this Court held in *Miranda v. Arizona*, 384 U.S. 436 (1966) that an accused must be warned of his constitutional rights whenever he is subjected to custodial interrogation. In *Berkemer v. McCarty*, 468 U.S. 420,

⁴ Thus, for example, Sergeant Johnston testified that petitioner had said he had gone to a particular restaurant on the night of the crime. R.T. 8302-03. A waitress at the restaurant testified that, although petitioner was a regular customer, he had not been in the restaurant on the night in question. R.T. 8512-15. The jury was instructed that it could rely on the statements to show petitioner's consciousness of guilt (R.T. 11174-75), and the prosecution vigorously urged the jury to draw such an inference (R.T. 11424-29, 11431, 11445, 11447).

⁵ Although petitioner submits that, in the circumstances of this case, any error affecting the jury's evaluation of his credibility was prejudicial, the California Supreme Court did not consider whether error in the trial court's *Miranda* ruling was prejudicial because it found no error. See J.A. 469 n.11.

442 (1984), this Court stated that the test of custody under *Miranda* is an objective one: whether a reasonable person in the suspect's position would have felt that his freedom of action had been restrained in a manner comparable to that of a formal arrest. Notwithstanding the clear directive of *Berkemer*, the state courts in the present case resolved the issue of custody on the basis of the subjective intent and uncommunicated suspicions of the police officers who brought petitioner to the Pomona, California, jail and interrogated him there.

The decisions of this Court and the lower courts teach that the objective circumstances most important in determining when custody attaches are: whether an accused's freedom of action has been restrained through a show of force or authority, whether the accused has been informed that he is not under arrest or not required to submit to questioning, whether the atmosphere of the questioning is police-dominated, and whether he is placed under arrest at the termination of the questioning. See *California v. Beheler*, 463 U.S. 1121, 1122, 1125 (1983) (per curiam); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam); *U.S. v. Griffin*, 922 F.2d 1343, 1348-55 (8th Cir. 1990).

The undisputed facts of this case, viewed in light of the foregoing factors, reveal that petitioner was subjected to custodial interrogation. Four police officers with drawn guns accosted petitioner at his home late at night, brought him to a small interview room in a secured area of the Pomona jail from which he was unable to leave without assistance, questioned him about his whereabouts and activities on the day of the crime, and arrested him at the conclusion of the questioning when he asked

for a lawyer. It is not claimed that, at any time before or during the questioning, petitioner was informed that he was not under arrest, that he need not submit to questioning, or that he was free to leave. Any reasonable person in these circumstances would have understood that he was in custody long before he was formally arrested.

The subjective standard for custody endorsed by the California Supreme Court is not only contrary to this Court's precedents, but also disservices the interests protected by *Miranda*. Since coercion must be determined from the perspective of the individual being questioned, a test for custody that conditions the requirement of warnings on the undisclosed intentions of the police does little to reduce the compulsion inherent in custodial surroundings. Moreover, such a standard would embroil the courts in disputes, often long after the fact, on the issue of a police officer's intent. Surely this Court, in adopting *Miranda's* "concrete constitutional guidelines" (384 U.S. at 442), did not contemplate that the custody issue would have to be resolved by mini-trials on a police officer's state of mind.

ARGUMENT

I. THE TEST OF CUSTODY FOR *MIRANDA* PURPOSES IS AN OBJECTIVE ONE THAT EVALUATES THE TOTALITY OF THE CIRCUMSTANCES FROM THE PERSPECTIVE OF A REASONABLE PERSON IN THE DEFENDANT'S POSITION.

A criminal defendant's right to the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966) is

triggered whenever the individual is subjected to custodial interrogation, that is, "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444, footnote omitted. The Court in *Miranda* determined that, without adequate safeguards, the compulsion inherent in custodial surroundings undermines the Fifth Amendment privilege against self-incrimination by compelling an individual to speak "where he would not otherwise do so freely." *Id.* at 467. In requiring the now familiar *Miranda* warnings, the Court made it clear that it was concerned with the inherently coercive nature of questioning in an "incommunicado police-dominated atmosphere." *Id.* at 456.

While this Court has recognized that "the task of defining 'custody' is a slippery one" (*Oregon v. Elstad*, 470 U.S. 298, 309 (1985)), "the ultimate inquiry is simply whether 'there is a formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest" (*California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam), quoting *Oregon v. Mathiason*, 429 U.S. 492, 497 (1977) (per curiam)). The formality of an arrest is not, however, a prerequisite to a finding of custodial interrogation. *U.S. v. Griffin*, 922 F.2d 1343, 1347 n.3 (8th Cir. 1990).

In the years following *Miranda*, some lower courts addressed the issue of custody by examining whether police suspicions had "focused" on the individual being questioned, even if those suspicions had not been communicated to him. In a series of decisions culminating in *Berkemer v. McCarty*, 468 U.S. 420 (1984), this Court laid to rest any doubt whether the subjective and undisclosed

perceptions of the police are relevant to the question when *Miranda* warnings must be given. In *Berkemer*, the officer who stopped a motorist on suspicion of drunken driving had decided from the outset that the motorist "would be taken into custody and charged with a traffic offense," but he "never communicated his intention" to the motorist. *Id.* at 442. This Court held that the officer's intent to arrest was irrelevant in determining whether the motorist was "in custody" for *Miranda* purposes:

A policeman's unarticulated plan has no bearing on the question whether a suspect was "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.

Id. at 442 (emphasis added).⁶

II. IN DETERMINING THAT PETITIONER WAS NOT IN CUSTODY, THE COURTS BELOW INCORRECTLY FOCUSED ON THE INTERROGATING OFFICERS' UNDISCLOSED INTENT AND SUBJECTIVE SUSPICIONS.

Notwithstanding this Court's determination in *Berkemer* that custody is determined from the standpoint

⁶ See also *Beckwith v. United States*, 425 U.S. 341, 346 (1976) (it is "the custodial nature of the interrogation . . . 'and not the strength or content of the government's suspicions at the time the questioning was conducted' ", which determines whether *Miranda* warnings are required) (citations omitted); *Oregon v. Mathiason*, 429 U.S. at 495 (question whether *Miranda* warnings are necessary does not turn on whether "questioned person is one whom the police suspect"); *California v. Beheler*, 463 U.S. at 1125 (same).

of a "reasonable man in the suspect's position" (468 U.S. at 442), the trial court decided the issue of custody in this case primarily on the basis of a police officer's uncommunicated suspicions. At the conclusion of the hearing on petitioner's motion to suppress, the trial court made a single factual finding:

I'm satisfied from Lieutenant Johnston's testimony that at the time that [petitioner] was brought into the station . . . the focus in [Johnston's] mind certainly was on the other ice cream driver. . . .

[T]he focus I believe at the time that the interview [with petitioner] started was definitely on Yusuf [the other driver]. . . .

[T]hen after [petitioner] made the comment about describing the turquoise automobile, . . . that's when the focus shifted to [petitioner].

And all after that statement, starting with his past record will be excluded.

J.A. 432-33 (emphasis added).

The California Supreme Court likewise determined the issue of custody in reliance on the degree of the interrogating officer's subjective suspicions and his undisclosed conclusion that, until petitioner described the turquoise car, he would have let him go if petitioner had so requested. J.A. 471-77. While the opinion below does mention factors that are relevant to the issue of custody, such as "the form of questioning" (J.A. 475) and the fact that petitioner "was interviewed in a locked room" (J.A. 473), the state supreme court, like the trial court, made the police officers' undisclosed intent and suspicions controlling. There is nothing to suggest that the court would have reached the same conclusion

regarding custody had it considered only those factors that are relevant under an objective test of custody.⁷

III. THE PROPER FACTORS TO BE CONSIDERED IN DETERMINING WHETHER INTERROGATION IS CUSTODIAL.

While *Berkemer* made it clear that the test of custody is an objective one, this Court has not addressed comprehensively the factors that should or should not be considered in determining whether a reasonable person would believe he was in custody. *Cf. Maine v. Thibodeau*, 475 U.S. 1144, 1145 (1986) (Burger, C.J., dissenting from denial of certiorari) (noting the "acute need for clarification of the proper factors to be considered in making the 'in custody' determination"). Nonetheless, the Court's decisions point the way to identifying the relevant circumstances.

From *Miranda* we know that warnings are required to dispel the compulsion and intimidation that are inherent in incommunicado police interrogations and which otherwise would undermine the privilege against self-incrimination. 384 U.S. at 467. Because the compulsion of

⁷ It appears that the California Supreme Court may have considered its review of the custody issue circumscribed by what it erroneously perceived to be the binding effect of the trial court's finding as to when petitioner became subject to custodial interrogation. J.A. 470, 474. The trial court's legal conclusion as to when custody attached was, however, based solely upon a factual determination regarding the time at which petitioner became the focus of the investigation in the mind of Sgt. Johnston. J.A. 432-33. Since that fact is irrelevant to the custody question, the California Supreme Court owed no deference to the trial court's finding on the custody issue.

incommunicado interrogation operates on the individual being questioned, the issues of custody and coercion are examined from the standpoint of that individual. This Court has so indicated. *E.g.*, *Berkemer*, 468 U.S. at 442 ("the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation"); *Illinois v. Perkins*, 496 U.S. 292, 296 (1990) ("[c]oercion is determined from the perspective of the suspect").

The Court's decisions in *Oregon v. Mathiason*, 429 U.S. 492 (1977) (per curiam) and *California v. Beheler*, 463 U.S. 1121 (1983) (per curiam) also provide guidance. In those cases, the Court determined that the station house interviews of the defendants were not custodial where each defendant (1) contacted the police voluntarily in response to a request for information (*Mathiason*, 429 U.S. at 495), or initiated the contact himself (*Beheler*, 463 U.S. at 1122, 1125), (2) was expressly told prior to questioning that he was not under arrest (*Beheler*, 463 U.S. at 1122; *Mathiason*, 429 U.S. at 495), and (3) "did in fact leave the police station without hindrance" after the interview (*Mathiason*, 429 U.S. at 495; *Beheler*, 463 U.S. at 1121, 1122).

Similarly, in holding that roadside questioning during a routine traffic stop ordinarily is not inherently compulsive, and thus does not normally trigger the requirement of *Miranda* warnings, the *Berkemer* Court pointed out that: (1) the duration of a traffic stop "is presumptively temporary and brief" (468 U.S. at 437), (2) during a typical traffic stop the motorist and the police are exposed to public view (*id.* at 438), and (3) the motorist "typically is confronted by only one or at most two policemen" (*ibid.*).

The lower courts have looked to similar factors. Perhaps the most extensive analysis of the problem is Judge Battey's thoughtful opinion for the Eighth Circuit in *U.S. v. Griffin*, 922 F.2d 1343 (8th Cir. 1990), in which he formulated the following "nonexhaustive" list of factors to be considered in determining whether interrogation is custodial:

- (1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning.

922 F.2d at 1349.

Judge Battey characterized "the accused's freedom of action during the interrogation" as "a critical factor." *Id.* at 1348. He also observed that:

- the absence of police advisement that the suspect is not under formal arrest, or that the suspect is at liberty to decline to answer questions, has been identified as an important indicium of the existence of a custodial setting.

Id. at 1350.⁸

⁸ See also *U.S. v. Carter*, 884 F.2d 368, 372 (8th Cir. 1989) (defendant in custody where he "was not told that he was free to leave or that he did not have to answer questions"); *U.S. v.*

IV. APPLYING PROPER FACTORS TO THE IN-CUSTODY DETERMINATION, PETITIONER'S INTERROGATION WAS CUSTODIAL.

The undisputed facts of this case, viewed in light of the factors this Court and the lower courts have deemed relevant, demonstrate that petitioner was "subjected to treatment that render[ed] him 'in custody' for practical purposes." *Berkemer*, 468 U.S. at 440. Rejecting the police officer's subjective suspicions, as *Berkemer* requires, the evidence shows that petitioner was confronted at his home late at night by four police officers, with guns drawn and "in a ready position," and "invited" to accompany them (J.A. 209, 475); was brought to a small interview room in the Pomona jail from which he was unable to leave without assistance; was never informed that he was not under arrest or that he was free to leave; was continually in the presence of at least two officers except when alone in the interview room; was questioned by the police about his whereabouts and activities on the day of the crime; and was arrested when he asked for a lawyer. Any reasonable person in these circumstances would have understood that he was in custody long before he was formally arrested.

A. Petitioner's presence at the Pomona jail was obtained through an overwhelming show of force.

Petitioner first encountered the police on the date of his interrogation when he opened the door of his home at

Beraun-Panez, 812 F.2d 578, 581 (9th Cir. 1987) (defendant in custody where he was not told he was free to leave); compare *United States v. Manglona*, 414 F.2d 642, 644 (9th Cir. 1969) (defendant not in custody where he "was specifically told that he was not under arrest and was free to terminate the interview at any time").

11:00 p.m. to find four police officers deployed around his doorway with drawn guns. J.A. 52-55, 63-65, 207-14, 380-84. Although the California Supreme Court states that petitioner "was invited, not commanded to come to the police station" for questioning (J.A. 474), a reasonable person confronted with such a display of force would not have felt at liberty to disregard such an "invitation":

It goes without saying that the display of a weapon by police officers plainly conveys to a reasonable citizen the message that he is not free to leave; i.e., that his freedom of action is dramatically curtailed.

People v. Taylor, 178 Cal.App.3d 217, 229, 223 Cal.Rptr. 638, 644 (1976).⁹

The California Supreme Court asserts that the officers' guns were "out but not displayed" (J.A. 472), and maintains that "[t]here is no evidence [petitioner] saw the guns" (J.A. 476). Officer Lee testified, however, that all of

⁹ Accord, *United States v. Scharf*, 608 F.2d 323, 324 (9th Cir. 1979) (defendant in custody where he found his house surrounded by police officers "some of whom were holding weapons"); *State v. Petty*, 48 Wash.App. 615, 623-24, 740 P.2d 879, 884 (1987) ("[w]hen an officer draws a weapon in a confrontation with a suspect, it is a strong indication to the suspect that he is in custody"); *Miley v. United States*, 477 A.2d 720, 722-23 (D.C. App. 1984) (drawing a weapon constitutes an assertion of authority over the defendant and is a clear indication that the encounter between the defendant and the officer has "escalated beyond a general investigation"); *People v. Herdan*, 42 Cal.App.3d 300, 307 n.11, 116 Cal.Rptr. 641, 645 n.11 (1974) ("If the police officer uses physical restraint on the suspect . . . or draws a gun it is more likely to be deemed custodial than if the questioning occurs without physical restraint or opportunity to restrain") (citations omitted).

the officers' guns were drawn when petitioner answered the door, and the trial court made no finding that petitioner could not see the guns. J.A. 55, 63-65, 207-08, 381.

The opinion below also suggests that the officers merely drew their guns "for their own protection." J.A. 472. But such an undisclosed purpose could not have lessened the coercive impact of the encounter.¹⁰ Nor, as the opinion appears to suggest, is it relevant that some of the officers "were not homicide investigators" (J.A. 472) or were "not involved in the investigation" (J.A. 471). There is no evidence that petitioner was aware of the officers' status or its significance.

The California Supreme Court also places great weight on the officers' testimony that they "had not been told to arrest [petitioner] if he refused" to accompany them (J.A. 472), and that they "would have honored [his]

¹⁰ See *Griffin*, 922 F.2d at 1354 (officer's need to escort defendant "for safety concerns" was not disclosed to defendant at the time and thus did not mitigate the restraint imposed by the officer's presence); *U.S. v. Camacho*, 674 F. Supp. 118, 122-23 (S.D.N.Y. 1987) (the fact that conditions imposed on defendant by officers were "essential" for their own protection "does not change the fact that [such] restrictions . . . would have led a reasonable person under the circumstances to believe that he was not free to go"); *Petty*, 48 Wash.App. at 624 n.4, 740 P.2d at 884 n.4 (the "coercive environment created by the drawn weapons" rendered defendant in custody notwithstanding that "[s]afety concerns . . . ma[de] such an approach absolutely necessary"); *Moss v. State*, 823 P.2d 671, 674 (Alaska Ct. App. 1991) (court noted that the "amount of force" used by the police in serving a search warrant and maintaining control over the premises "tend[ed] to establish custody" "even though it [was] necessary and justifiable" under the circumstances).

refusal to come to the station" (J.A. 474). It was not claimed that petitioner was ever told that he could refuse to accompany the officers or to submit to questioning.¹¹

These facts are in complete contrast to those in *Oregon v. Mathiason* and *California v. Beheler*, upon which the court below relied. J.A. 476. The defendant in *Mathiason* "came voluntarily to the police station" after he had contacted the police by telephone in response to a note left by an officer at his home. 429 U.S. at 495. Similarly, the defendant in *Beheler* himself initiated the first encounter with the police. 463 U.S. at 1122, 1125. Moreover, both defendants were specifically told that they were not under arrest. *Beheler*, 463 U.S. at 1122; *Mathiason*, 429 U.S. at 493, 495.

B. Petitioner was questioned in a locked room at the jail cut off from the outside world, with all the earmarks of the incommunicado, police-dominated atmosphere described in *Miranda*.

Although we submit that petitioner was in custody for *Miranda* purposes from the moment he was confronted by four armed police officers, the restraints on his freedom of action only increased thereafter. He was driven with two officers not to the public section of the

¹¹ Moreover, although the officers testified that petitioner was merely a "possible witness" (J.A. 56), they did not testify that they offered petitioner the opportunity to be questioned at his residence or to contact the police on his own later to set up an interview.

police station but to the jail proper.¹² J.A. 37, 57, 385. Petitioner was escorted by four officers through locked steel doors, and deposited in a small "locked interview room in the secure area of the jail." J.A. 473, *see* J.A. 61-62, 108-09, 400-01. This room was normally used for questioning suspects and persons "who were already in custody" or "were going to be" placed in custody. J.A. 405-06.

The California Supreme Court attempts to downplay the custodial aspects of this environment by explaining that the officers brought petitioner into the jail because they were unfamiliar with the Pomona police station and "had experienced difficulties and delays in using the nonsecure area" to question the other ice cream truck driver. J.A. 472. This analysis disregards this Court's admonition that the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation. *Berkemer*, 468 U.S. at 422; *see also United States v. Kennedy*, 573 F.2d 657, 660 (9th Cir. 1978)

¹² The California Supreme Court states that petitioner "was given the option of driving himself" to the station. J.A. 474. Petitioner was in fact asked to "accompany" the officers to the station and told that if he did not have his own transportation, it would be provided for him. J.A. 36, 56. There is no evidence that the police intended to allow petitioner to drive himself anywhere unescorted.

Nor does the fact that petitioner was not handcuffed during his ride to the station mean that he was not in custody. "[F]or one to be in custody, it is not required that he be in handcuffs." *United States v. Bekowies*, 432 F.2d 8, 12 (9th Cir. 1970), *quoting Rosario v. Territory of Guam*, 391 F.2d 869, 872 (9th Cir. 1968); *State v. Godfrey*, 131 N.J.Super. 168, 175, 329 A.2d 75, 78-79 (N.J.Super.A.D. 1974).

(agents' testimony that they questioned defendant in their vehicle because of cold weather and would have let him go at any time not determinative of custody where defendant "was not made aware of the agents' subjective purposes for the questioning" or their intent to release him).

As the California Supreme Court notes, petitioner could not have left the interview room (or even the secured area in which it was located) without the officers' assistance. J.A. 473. The opinion below states, however, based on the officers' testimony, that "[n]either of [the officers] considered [petitioner] to be in custody" (J.A. 473) and "would have let him go during questioning if he had so requested" (J.A. 474). Again, the analysis improperly focuses on the officers' subjective and undisclosed intent, contrary to *Berkemer*. From petitioner's standpoint, the police were in complete control.¹³

The California court's analysis, moreover, rests on a dangerous assumption. An assertion that the police would have backed down and released petitioner had he refused to accompany them to the police station or refused to be questioned is incapable of being tested after the fact. It is only tested if a suspect refuses to accede to a police show of force or refuses to be interrogated. The

¹³ *See United States v. Wauneka*, 770 F.2d 1434, 1438-39 (9th Cir. 1985) (defendant reasonably could have believed that he was in custody where he had no transportation and "he was never offered an opportunity to leave"); *compare Green v. Superior Court*, 40 Cal.3d at 131, 219 Cal.Rptr. at 188, 707 P.2d at 250 (defendant not in custody where he was explicitly told that he would be returned to his workplace on request).

California court's analysis, however, implies that the police have no obligation to inform a citizen of his constitutional rights unless the citizen has first challenged the authority of the police and they have overcome his resistance. In the circumstance of this case, this would mean that a citizen who has four policemen at his door, in the middle of the night with guns drawn, who "invite" him to the police station for questioning, must question or challenge their purpose and authority and, if no challenge is made, the police have no obligation to give a *Miranda* warning. There is no justification for placing this risk and burden on the citizen.

The court below also noted that petitioner was questioned for "a brief 20 or 30 minutes" (J.A. 475 n.12), implying that the duration of the interrogation demonstrates that it was noncustodial. However, "the length of the interrogation" is generally regarded as an "undeterminative factor in the analysis of custody." *Griffin*, 922 F.2d at 1348. Here, petitioner was questioned by the police in detail about his activities before, during and after a kidnapping and murder. The questioning ended when it did only because petitioner was finally given *Miranda* warnings and asked for an attorney. He was then immediately arrested and booked. J.A. 91-92.

- C. There is no evidence or claim that petitioner was ever informed that he had a choice whether to accompany the officers or to be interrogated.

Despite the police officers' testimony that they considered petitioner free to refuse to accompany them to the station or to refuse to be questioned, they never adopted

"[t]he most obvious and effective means of demonstrating that a suspect has not been 'taken into custody or otherwise deprived of . . . freedom of action' . . . [by] inform[ing] the suspect that an arrest is not being made and that the suspect may terminate the interview at will." *Griffin*, 922 F.2d at 1349, quoting *Miranda*, 384 U.S. at 1612. The police officers' undisclosed willingness to release petitioner certainly would have no relevance to a reasonable person in his position.

- D. Petitioner's arrest at the close of the interview is a further indicium of custody.

The fact that petitioner was arrested following the questioning does not necessarily prove that he was in custody before that point. Nonetheless, the subsequent arrest colors what went before, and it would be difficult to say that it would be unreasonable for one in the suspect's position to believe himself in custody when, as it turns out, he is placed in formal custody. *Bekowies*, 432 F.2d at 14; see also, *Griffin*, 922 F.2d at 1355. Here, petitioner's arrest after he finally received *Miranda* warnings simply gave a formal imprimatur to custody that, as a practical matter, had already attached.

- V. A TEST FOR CUSTODY THAT TURNS ON THE SUBJECTIVE INTENT OF THE POLICE DISSERVES THE INTERESTS PROTECTED BY *MIRANDA* AND WOULD BE INEFFICIENT AND IMPRACTICAL TO ADMINISTER.

As this Court has explained, the primary purposes of the *Miranda* safeguards are:

to relieve the " 'inherently compelling pressures' " generated by the custodial setting itself, " 'which work to undermine the individual's will to resist,' " and as much as possible to free courts from the task of scrutinizing cases to try to determine, after the fact, whether particular confessions were voluntary. ↘

Berkemer, 468 U.S. at 433 (citations omitted).

A subjective standard for determining custody such as that applied to petitioner in the present case is neither faithful to the concerns that motivated the Court's decision in *Miranda* nor susceptible of easy application by the police and the courts.

A test for custody that hinges on the subjective and undisclosed intentions of the police fails to recognize what was implicit in *Miranda* and made explicit in later cases: that "[c]oercion is determined from the perspective of the suspect." *Illinois v. Perkins*, 496 U.S. 292, 296 (1990). Simply stated, "[t]he threat to a citizen's Fifth Amendment rights that *Miranda* was designed to neutralize has little to do with the strength of an interrogating officer's suspicions." *Berkemer*, 468 U.S. at 435 n.22.¹⁴

¹⁴ See also *United States v. Hall*, 421 F.2d 540, 544 (2d Cir. 1969), cert. denied, 397 U.S. 990 (1970) (noting that a test for custody which conditions the requirement of warnings on the inner intentions of the police "fail[s] to recognize *Miranda*'s concern with the coercive effect of the 'atmosphere' from the point of view of the person being questioned"); *Hunter v. State*, 590 P.2d 888, 897 n.35 (Alaska 1979) (rejecting a standard "based on the officer's 'unexpressed intent' " since "the officer's undisclosed intent cannot affect the suspect's perceptions").

Moreover, a subjective standard for custody would be difficult to administer. As this Court has explained, "[a] major purpose of the Court's opinion in *Miranda* . . . was 'to give concrete constitutional guidelines for law enforcement agencies and courts to follow.' " *Arizona v. Roberson*, 486 U.S. 675, 680 (1988) (citations omitted); see also *Berkemer*, 468 U.S. at 430, citing *Fare v. Michael C.*, 442 U.S. 707, 718 (1979) ("[o]ne of the principal advantages" of the *Miranda* doctrine "is the clarity of that rule"). Conditioning the requirement of warnings on the officer's inner suspicions would require the officer "constantly to monitor the information available to him to determine when it becomes sufficient to [make the accused a suspect]." *Berkemer*, 468 U.S. at 435 n.22; accord *Hunter*, 590 P.2d at 897 n.35 (a subjective test for custody "offers no guidance to police officers because it makes the officer's own conditional intent the standard for when he or she should give *Miranda* warnings").

Such a standard would also be unwieldy for the courts to apply, since the question of custody would be " 'dependent either on the self-serving declarations of the police officers or the defendant.' " *Berkemer*, 468 U.S. at 442 n.35, quoting *People v. P.*, 21 N.Y.2d 1, 9-10, 233 N.E.2d 255, 260 (1967). As one court has aptly observed, application of a subjective standard would embroil the courts in

swearing contests in which officers would regularly maintain their lack of intention to assert power over a suspect save when the circumstances would make such a claim absurd, and defendants would assert with equal regularity that they considered themselves to be significantly deprived of their liberty the minute officers began to inquire of them.

Hall, 471 F.2d at 544.

The instant case is a good example of the difficulties in applying a custody standard based on the inner intentions of the police. The suppression hearing, which took place more than two years after petitioner's interrogation, turned into a mini-trial on the extent to which Sergeant Johnston had, or might have, "focused" his suspicions on petitioner prior to the interrogation. Since Johnston was engaged in an on-going investigation at the time of the interrogation, the lower court's approach to the custody issue meant that he had to attempt, two years after the fact, to reconstruct what he knew or had heard prior to the interrogation and to separate that information from what he learned or heard later. Sergeant Johnston had difficulty reconstructing such a state of mind. *See, e.g., J.A. 177-87.* Surely, this Court, in adopting the bright line rule of *Miranda*, did not contemplate mini-trials on the question of custody to turn upon the policeman's memory of *his* state of mind at particular points in a crime investigation. *See Griffin, 922 F.2d at 1355.*

The objective "reasonable person" test articulated in *Berkemer* and *Griffin*, by comparison, gives the police and the courts relatively clear and objective criteria by which to determine whether, in circumstances short of formal arrest, an individual is in custody for *Miranda* purposes. By making the reactions of a *reasonable* person the controlling inquiry, the objective test relieves police of "the burden of anticipating the frailties or idiosyncracies of every person whom they question." *Berkemer, 468 U.S. at 442 n.35, quoting People v. P., 21 N.Y.2d at 9-10, 233 N.E.2d at 260 (1967); see also Beraun-Panez, 812 F.2d at 581.* The objective test likewise gives the courts a workable standard for determining custody that can be applied without

creating a "finespun new doctrine . . . complete with [] hair-splitting distinctions." *New York v. Quarles, 467 U.S. 649, 663-64 (1984) (O'Connor, J., concurring and dissenting).*

Application of the objective standard consistent with *Berkemer* and *Griffin* compels the conclusion that petitioner's interrogation was custodial.

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of California should be reversed.

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No. 93-5770

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**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993**

ROBERT EDWARD STANSBURY,
Petitioner,
vs.
STATE OF CALIFORNIA,
Respondent.

**ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA**

RESPONDENT'S BRIEF ON THE MERITS

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QUESTION PRESENTED

Whether the state court's finding that petitioner was not in custody was supported by the record where he voluntarily went to the police station for questioning, was told only that he was a potential witness, and was free to leave at any time?

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No. 93-5770

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

**ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA**

RESPONDENT'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

On November 23, 1982, the Los Angeles County District Attorney filed an information charging petitioner with the first degree murder (Cal. Penal Code § 187)^{1/} of ten-year old Robyn Jackson; lewd acts on a child under

1. Unless otherwise indicated, all statutory references are to the California Penal Code.

the age of 14 (§ 288(b)); rape (§ 261(2)); and kidnapping (§ 207). The information alleged special circumstances that the murder was committed in the commission of kidnapping (§ 190.2(a)(17)(ii)); in the commission of a rape (§ 190.2(a)(17)(iii)); and in the commission of a lewd and lascivious act upon a child under the age of 14 years (§ 190.2(a)(17)(v)). The information further alleged that petitioner inflicted great bodily injury in connection with the noncapital offenses (§§ 1203.075, 12022.7, 12022.8) and that petitioner committed the offenses while on parole for rape and lewd acts upon a child under the age of 14 years (§§ 1203.085(a), 3000). CT 1-5; J.A. 1, 438.

On April 30, 1984, petitioner moved to suppress statements made to the police before his arrest. J.A. 1, 5-13. On June 25, 1984, the prosecution filed its opposition to petitioner's motion. J.A. 1, 14-20.

On October 30, 1984, the state trial court commenced a hearing on petitioner's suppression motion. J.A. 1, 21. On November 5, 1984, the state trial court granted in part and denied in part petitioner's suppression motion. J.A. 1, 432-33, 435-37.

On May 22, 1985, the jury found petitioner guilty of all charges and found the enhancements and special circumstances to be true. J.A. 1, 438.

On May 31, 1985, the same jury returned a sentence of death. J.A. 1, 438. The state trial court entered its judgment of death on July 15, 1985. J.A. 1.

Petitioner's appeal to the California Supreme Court was automatic. J.A. 438. On March 8, 1993, the California Supreme Court issued its opinion affirming the judgment in its entirety. J.A. 438-511, 514. Following a minor modification of the opinion, the California Supreme

Court denied a petition for rehearing on May 26, 1993. J.A. 512-13.

On August 24, 1993, petitioner filed a petition for writ of certiorari. On November 1, 1993, this Court granted the writ, limited to Question 3 of the petition.

STATEMENT OF FACTS

A. The Underlying Offense

On September 28, 1982, petitioner drove his white ice cream truck through the Baldwin Park neighborhood of Los Angeles. At approximately 4:45 p.m., a competitor saw petitioner driving his truck; the truck functioned normally. RT 10711, 10715. At 5:00 p.m., petitioner drove the rear of his truck into a chain link fence. RT 7589-90, 10689. The property owner summoned the police. The owner gave the police petitioner's name and driver's license number. RT 10696. Petitioner agreed to repair the minimal damage to the fence. RT 10697. The property owner discerned no mechanical difficulties to petitioner's truck. RT 7595.

At approximately 6:00 p.m., ten year old Robyn Jackson obtained her mother's permission to play in the schoolyard on her street. RT 7577-78. Robyn's mother told her to return home before dark. RT 7578.

A neighbor saw a white ice cream truck near the school at about 6:00 p.m. This neighbor's son saw Robyn talking to the red haired, bearded ice cream truck driver who wore glasses.^{2/} RT 7520-21, 7625, 7632-35. The next time the boy looked toward the schoolyard, Robyn had disappeared; the ice cream truck made an uncharacteristic U-turn and drove away from the area. RT 7522-23. Normally, the ice cream truck proceeded all the way down

2. Petitioner had red hair, a beard, and wore glasses at the time of the incident. RT 7536, 7596, 8128-29, 8202-04.

the street. RT 7522-23.

Petitioner over time established a unique relationship with ten-year old Robyn by giving her free candy and ice cream. Petitioner did not give gifts to the other neighborhood children. RT 7533, 7636, 7652.

Petitioner did not return to his residence until after 9:00 p.m. RT 8402. At about midnight, petitioner borrowed his roommate's turquoise automobile, stating that he wanted to get something to eat. RT 7248-52, 10145. Petitioner parked the automobile next to the ice cream truck; the car remained in the driveway a few minutes before petitioner left. RT 7252-53, 10152-53, 10424-33. Petitioner did not return until approximately 3:00 a.m. RT 7192-93.

At approximately 1:15 a.m., Andrew Zimmerman saw the turquoise automobile in Pasadena. RT 6976, 6999. Zimmerman observed a large man get out of this car and dump something into a flood control channel. RT 6979, 6987.

Zimmerman looked into the flood channel and observed a body. He then telephoned the police. RT 6977. At approximately 1:30 a.m., the police discovered Robyn Jackson's dead body in the flood control channel. The child was naked and had fresh blood in her vaginal area. RT 7130, 7510-11.

Before her death, the child had been placed in a cold, oxygen-deprived environment, such as an ice cream freezer. RT 7306, 7461-65. There was evidence of saliva deposited by a nonsecretor on the victim's genital area and right nipple. RT 7350, 7361-62, 7387-88. The victim was a secretor; petitioner, like only 20 percent of the population, was a nonsecretor. RT 7365-60, 7390. Robyn

suffered bruises to her face and chin as well as scratches to the right side of her face. The child died at approximately 1:30 a.m. when her head struck the concrete floor of the flood control channel. RT 7416, 7434, 7437-38.

At the penalty phase, the prosecution presented evidence of other crimes committed by petitioner. At the age of 20, petitioner violently assaulted and sexually abused two boys, then ages 10 and 9. RT 11805, 11820-21. He threatened to kill the boys, and forced one to dig a grave. RT 11808-09, 11819-20. Petitioner was convicted of lewd conduct with children for these activities. RT 11805, 11808. Petitioner served a five-year, two month term of imprisonment for these crimes. RT 11805, 11869.

Less than two years after his release from prison, petitioner kidnapped, raped, robbed and threatened to kill a 21-year old woman. RT 11806, 11857-58. Petitioner was imprisoned for slightly over two years for these offenses. RT 11806-07, 11860.

About a year after his release, petitioner, while armed, raped a 14-year old girl. RT 11807. Within four days, petitioner, while armed with a firearm, kidnapped a 21-year old woman. RT 11807. Petitioner served a prison term of approximately six years for these offenses. RT 11807. Petitioner was on parole when he committed the crimes against Robyn Jackson. RT 11807, 11870.

B. The Murder Investigation

On September 29, 1982, Lieutenant Johnston, a Los Angeles County Sheriff's investigator, was assigned to

the Robyn Jackson homicide. J.A. 67. Johnston interviewed a witness who saw the driver of a turquoise automobile dump the child's body in the flood control canal. J.A. 68-69. The witness described the driver as a "big man." J.A. 94. The turquoise car provided the only solid link to the murder. J.A. 68, 93.

Johnston was attempting to locate all possible witnesses to the kidnapping, and to that end learned from a Baldwin Park police officer that petitioner had been involved in a traffic accident in the area where the child disappeared. J.A. 69. Johnston had information that two ice cream trucks had been in the Baldwin Park area. J.A. 99-100. A child witness told Johnston that he saw Robyn near a blue ice cream truck operated by a Black man just before her disappearance.^{3/} J.A. 145-46. Johnston contacted Yusuf Nyanganira^{4/} to interview him about his knowledge of the case. J.A. 70.

Johnston asked undercover Baldwin Park police officers to contact petitioner for an interview as a possible

3. Petitioner emphasizes that the police had information that the victim was seen with him near the time of her disappearance. But Johnston testified that Donald Helmer gave information to the police that the victim was seen talking to a Black male in a blue ice cream truck at about five o'clock on the evening of her disappearance. RT 2126-28, 2148. Jeremy Ramos, a five year old, initially told the police that he last saw the victim talking to a Black male in a blue ice cream truck. RT 2128-29, 2148, 2171. Jeremy Ramos also indicated that he saw Robyn talking to an individual matching petitioner's description before dinner. RT 2148. The police interviewed Ramos after Sharon Sanchez gave them information originating with Ramos. J.A. 145.

4. Petitioner's truck was white; petitioner is Caucasian. Yusuf was Black and drove a blue ice cream truck. J.A. 146, 148.

witness; Johnston never indicated or even intimated that petitioner was a suspect. J.A. 31-32, 72, 207-08, 239. Petitioner was not to be detained or arrested. J.A. 72. Johnston wanted to talk to petitioner because petitioner was in the vicinity of the kidnapping, not because he was a suspect. J.A. 152. No homicide investigator went to petitioner's residence. J.A. 34. If petitioner had been a suspect, a homicide investigator would have been dispatched to assist in his apprehension. J.A. 72. Neither Johnston nor the other officers had information about petitioner's criminal history or prior convictions.^{2/} J.A. 35, 87.

After petitioner arrived at the Pomona police station, Johnston and Baldwin Park Police Officer Bell spoke with petitioner in an interview room.^{6/} Johnston had never conducted interviews at the Pomona police station.^{2/} J.A. 108.

5. Johnston requested criminal histories on "a number of people," including petitioner. J.A. 107. He received information indicating that petitioner did not have prior convictions. J.A. 108.

6. Officer Bell was an observer only and not a member of the homicide investigation team. J.A. 227-29. Only after suspicion had focused on petitioner did Johnston summon the other two homicide investigators. J.A. 157-58.

7. Yusef was interviewed upstairs while petitioner's interview took place on the ground floor near the jail facility. Johnston testified that the investigators' use of an upstairs interview room was inconvenient.

"It caused quite a bit of difficulty because there is nobody upstairs in the Pomona police department after five o'clock at night.

"So there was some difficulty in accessing a key, getting permission. One of the reasons we had only just begun interviewing Yusef when we were advised Mr.

Johnston testified that petitioner was not in custody or in any way restrained. J.A. 74. Johnston did not consider petitioner a suspect and would have permitted petitioner to leave.^{2/} J.A. 74, 153. Johnston showed a photograph of Robyn Jackson to petitioner during the interview. Johnston used the photograph to explore "the possibility of him having seen her coming from or going to any particular location or persons or vehicles or whereabouts at a time that might be pertinent to this investigation." J.A. 81. The conversation regarding petitioner's activities was casual. J.A. 121. Lieutenant Johnson believed petitioner's statements until he described the turquoise automobile. J.A. 123, 132, 137.

C. Petitioner's Interview

Petitioner lived in a Pomona trailer park. J.A. 32. Four Baldwin Park undercover police officers went to petitioner's residence at approximately 11:00 p.m. on September 29, 1982. J.A. 30-31, 42, 205-09. Officer Lee knocked on petitioner's door; the other officers were behind or to the side of Lee. J.A. 35, 207. When petitioner answered the door, Lee identified himself as a

Stansbury was downstairs was the delay in getting permission to go upstairs, finding a key to go upstairs and it seemed more considerate of Mr. Stansbury to come to him than to move him around the facility anymore." J.A. 110.

8. Officer Bell also testified that she would have permitted petitioner to leave. J.A. 245.

police officer. J.A. 36. Lee requested that petitioner accompany him to the Pomona police department for an interview.^{9/} Lee specifically told petitioner that the homicide detectives wanted to speak with him as a "possible witness."^{10/} J.A. 36. Lee indicated that petitioner could drive himself or they could provide transportation if petitioner had no means of getting to the police station on his own. J.A. 36-37. Petitioner agreed to the interview, stating that he had no transportation.^{11/} J.A. 37, 57.

Officer Lee drove petitioner to the Pomona police station. Petitioner sat in the front passenger seat of the unmarked police car. J.A. 37-38. Petitioner was not handcuffed. See J.A. 422. Lee did not question petitioner about the homicide. J.A. 39. Petitioner was very cooperative; he never voiced any concern or indicated any hesitation in accompanying the officers. J.A. 57, 66.

9. Petitioner emphasizes that the police officers were armed when they contacted him. But two officers were located at the end of the trailer and the location of Lee's gun prevented petitioner's view of the weapon. J.A. 65-66. Furthermore, the officers holstered their weapons when petitioner exited the trailer. J.A. 57. None of the officers pointed a gun at petitioner. J.A. 65, 210.

10. Officer Lee testified, "I told him I was there in reference to a homicide investigation, that he was a possible witness, and that the homicide detectives were at the Pomona police department, and if he would accompany me to the Pomona police department." J.A. 36.

11. Petitioner states that "[n]o witness testified that petitioner was offered any choice whether to go to the police station." Brief of Pet. at 6. Officer Lee testified, "I asked him if he would accompany me to the Pomona Police Department" J.A. 56 [emphasis added.] This terminology certainly indicates that petitioner was given a choice. Officer Lee described petitioner as "very cooperative." J.A. 58.

Lee and the other officers entered the Pomona police station through the sally port. J.A. 40. A local police officer directed them to an interview room on the ground floor. J.A. 62. The officers then accompanied petitioner to this interview room. J.A. 40. Lee went upstairs to notify Lieutenant Johnston that petitioner was in an interview room. J.A. 40, 73.

Lieutenant Johnston met petitioner in the interview room. Baldwin Park Police Officer Darlene Bell was present for the interview. J.A. 73-74. Petitioner was not handcuffed or physically restrained. J.A. 73. The interview was not tape recorded. J.A. 234. The interview room was located near the booking area of the Pomona jail. J.A. 108. The room contained a table and three or four chairs. J.A. 115. Lieutenant Johnston did not recall if the door was closed during the interview and did not know if the door locked. J.A. 116. The interview room was in a secured area.^{12/} J.A. 260.

Lieutenant Johnston told petitioner that he wanted to question him as a potential witness. J.A. 248, 258. Johnston did not inform petitioner of his *Miranda* rights. J.A. 74. Johnston asked petitioner about his

12. Petitioner states that this interview room was "normally" used for questioning suspects and individuals in custody. Brief of Pet. at 7. The standard practice for local officers was irrelevant because nothing in the record establishes that a reasonable person in petitioner's position would be aware of the normal use of the interview rooms. Furthermore, the only witness who testified about the normal use of the interview room also testified that the upstairs interview rooms were normally locked at night and that the officers from another station would normally take a citizen informant to the sally port area. J. A. 408. Lieutenant Johnston testified that any movement beyond the public lobby "required passage by some means through some type of security door." J.A. 311.

activities on the day Robyn Jackson was abducted. J.A. 75. Petitioner provided a narrative of his activities on the date in question; he answered questions clarifying his responses. J.A. 118, 249. Petitioner answered Johnston's questions regarding other persons in the area.^{13/} Petitioner recognized Robyn's photograph; petitioner acknowledged that he saw the child on the evening she was abducted. J.A. 83, 85.

Toward the end of the interview, Johnston asked petitioner to describe the automobiles to which he had access. J.A. 87. When petitioner described the turquoise automobile he borrowed the morning that Robyn's body was thrown into the flood control canal, Johnston asked petitioner if he had any prior arrests. J.A. 87. Petitioner informed Johnston that he had prior convictions for rape and kidnapping and two prior convictions for child molestation. Petitioner also told Johnston he was on parole. J.A. 88. Johnston then stopped the interview. The interview lasted twenty to thirty minutes. J.A. 232, 264. Petitioner stated, "I guess that makes me a good suspect." J.A. 89. During the interview, petitioner never appeared reluctant to respond to questioning. J.A. 75. He never asked to leave or to terminate the interview. J.A. 75.

Johnston left the interview room and returned with the two other homicide investigators. J.A. 90. One of the other investigators read petitioner his *Miranda* rights. J.A. 91. Petitioner asked to speak with an attorney; the police did not question him any further. J.A.

13. Petitioner told Lieutenant Johnston that he saw a male Caucasian drive a white ice cream truck near the school. J.A. 85-86.

SUMMARY OF ARGUMENT

Miranda safeguards apply only where an individual is formally arrested or suffers restraint equivalent to formal arrest. The totality of the circumstances should dictate custodial status, looking to the view of the reasonable person in the interviewee's position.

A determination of custodial status for *Miranda* purposes should look to the nature of the initial encounter with the police, the circumstances of any transportation and, most significantly, the circumstances of the interrogation itself. The latter inquiry should incorporate relevant criteria, such as the location of the interview, the nature of the questioning, the extent to which the police confront the individual with evidence of guilt, the duration of the interview, and the degree of pressure exerted to detain the individual.

Application of these principles establishes that petitioner was not in custody when he was interviewed at the police station. Petitioner voluntarily agreed to give the interview and to accompany the police to the station house. The police invited rather than commanded petitioner's presence. These factors, viewed objectively from an interviewee's perspective, argue in favor of a noncustodial setting. Petitioner's consent was not vitiated by the proximity of the interview room to the local jail. The police did not use any restraints on petitioner. The police never confronted petitioner with any evidence of his guilt. To the contrary, they told him that they considered him a witness. The police exerted no pressure to compel petitioner to stay. He never expressed any unwillingness

to be questioned and never asked to leave. The interview only lasted approximately 25 minutes. In light of these objective factors, the state courts' conclusion that petitioner was not in custody is fully justified.

ARGUMENT

PETITIONER WAS NOT IN CUSTODY WHEN POLICE QUESTIONED HIM

Petitioner argues that statements which he made to police at the Pomona police station on the evening of September 29, 1982, were inadmissible because although they were elicited during custodial interrogation, he had not been advised of his constitutional rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966). The state courts rejected his contention, finding that he was not in custody during questioning, a prerequisite to giving *Miranda* warnings. Petitioner disputes this finding, arguing that the facts established that he was in custody as a matter of law and that the state courts applied an erroneous standard in ruling to the contrary.

For reasons which follow, respondent submits that the record before this Court fully supports the conclusion that petitioner was not in custody when he made the challenged statements. Respondent will identify the criteria, gleaned from this Court's decisions, which determine whether a station house questioning is custodial interrogation, and will demonstrate that petitioner was not in custody, and thus not subject to the coercive forces inherent in a police-dominated atmosphere, when he gave his incriminating statements.

A. General Principles

Miranda v. Arizona, *supra*, held "that the Fifth

Amendment privilege against self-incrimination prohibits admitting statements given by a suspect during 'custodial interrogation' without a prior warning." *Illinois v. Perkins*, 496 U.S. 292, 296 (1990). But only police custodial interrogation triggers the protections of *Miranda*. *Ibid*. Custody without interrogation does not implicate *Miranda*'s concerns. See *Arizona v. Mauro*, 481 U.S. 520, 527 (1987); *Rhode Island v. Innis*, 446 U.S. 291, 298 (1980). Nor does interrogation without custody require the observance of *Miranda*. *California v. Beheler*, 463 U.S. 1121 (1983); *Oregon v. Mathiason*, 429 U.S. 492 (1977) (per curiam). Moreover, there must be a nexus -- an "interaction" -- between police interrogation and police custody. *Illinois v. Perkins*, *supra*, 496 U.S. at 297.

Miranda posits that custodial interrogation creates a presumption of compulsion. *Oregon v. Elstad*, 470 U.S. 298, 307 (1985). This rule is in turn based upon two propositions. First, informal pressure to speak -- pressure not backed by legal process or formal sanction -- can constitute compulsion under the Fifth Amendment. Second, informal compulsion is present in any questioning of a suspect in custody. Schulhofer, *Reconsidering Miranda*, 34 U.Chi.L.Rev. 435, 436 (1987). Consequently, the Court required clear warnings which dispelled the coercive atmosphere of custodial interrogation by giving the suspect the power to exert some control over the course of the interrogation. *Moran v. Burbine*, 475 U.S. 412, 426-27 (1986).

The terms "custody" and "interrogation" have precise meanings. Interrogation includes "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police

should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis, supra*, 446 U.S. at 301; *Arizona v. Mauro, supra*, 481 U.S. at 526-27. Regarding custody, this Court has held that a detention under *Terry v. Ohio*, 392 U.S. 1 (1968), is insufficient to establish that element. *Berkemer v. McCarty*, 468 U.S. 420 (1984). Rather, "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler, supra*, 463 U.S. at 1125.

It is evident why both elements are necessary to establish coercion. If a reasonable person in the suspect's position did not know that the officer's words or conduct called for a response, he would feel no compulsion to answer. *Rhode Island v. Innis, supra*, 446 U.S., at 301-02. On the other side of the coin, if a reasonable person in the suspect's position knows that he is free to end the meeting and hence terminate the questioning, he is not susceptible to the "pressure on a suspect who is painfully aware that the literally cannot escape a persistent custodial interrogation." *Minnesota v. Murphy*, 465 U.S. 420, 433 (1984).

B. Custody

This case is about custody. If petitioner was in custody, the officers' failure to advise petitioner of his rights renders his statements inadmissible under *Miranda*. If he was not in custody, the statements were properly admitted in evidence. Respondent will survey this Court's

cases which define custody, discuss the factors identified by the lower courts as relevant to the issue of custody, address the criteria presented by petitioner, and suggest a workable framework for determining whether the subject of police station questioning is in custody within the meaning of *Miranda*.

1. This Court's Decisions

This Court began to shape the contours of custody in *Miranda* itself, when it defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any way." *Miranda v. Arizona, supra*, 384 U.S. at 444. The *Miranda* Court then noted, "This is what we meant in *Escobedo* when we spoke of an investigation which had focused on an accused." *Id.*, at 444, n. 4. (citing *Escobedo v. Illinois*, 378 U.S. 478 (1964)).

In *Beckwith v. United States*, 425 U.S. 341 (1976), this Court repudiated the notion that the focus of suspicion translated into custody. "Although the 'focus' of an investigation may indeed have been on Beckwith at the time of the interview in the sense that it was his tax liability which was under scrutiny, he hardly found himself in the custodial situation described by the *Miranda* Court as the basis for its holding." *Id.*, at 347.

In *Oregon v. Mathiason, supra*, 429 U.S. 492, the Court reiterated that *Miranda* warnings are not required simply because the questioned person is one whom the police suspect. "*Miranda* warnings are required only

where there has been such a restriction on a person's freedom as to render him 'in custody.' It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." *Id.*, at 495. In the context of the present case, it is significant that the questioning of the defendant in *Mathiason* was conducted in the police station to which he had come voluntarily. *Mathiason* established that interrogation at the station house is not necessarily custodial.

In *California v. Beheler*, *supra*, 463 U.S. 1121, also involving station house questioning, this Court reaffirmed its earlier holdings that custody is not established merely because an individual is the focus of a criminal investigation. "Our holding in *Mathiason* reflected our earlier decision in *Beckwith v. United States*, 425 U.S. 341 (1976), in which we rejected the notion that the 'in custody' requirement was satisfied merely because the police interviewed a person who was the 'focus' of a criminal investigation." *California v. Beheler*, 463 U.S. at 1124, n. 2. "Although the circumstances of each case must certainly influence a determination of whether a suspect is in custody for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Id.* at 1125.

In *Minnesota v. Murphy*, *supra*, 465 U.S. 420, this Court again repudiated a necessary connection between focus of suspicion and custody. "The mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings, *Beckwith v. United States*, 425 U.S. 341 (1976), and the probation officer's knowledge and intent have no bearing

on the outcome of this case." *Minnesota v. Murphy*, *supra*, 465 U.S. at 431.

In *Berkemer v. McCarty*, *supra*, 468 U.S. 420, this Court explicitly rejected a subjective test for determining custody. "A policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Id.*, at 441-42. *Berkemer* is also significant because it held that *Miranda* is inapplicable to traffic stops and *Terry*-type detentions. *Terry v. Ohio*, *supra*, 392 U.S. 1. This Court stated:

"The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*." *Berkemer*, 468 U.S. at 440.

"The task of defining 'custody' is a slippery one." *Oregon v. Elstad*, *supra*, 470 U.S. at 309. However, certain basic principles may be distilled from this Court's "custody" decisions. First and foremost, custody is the functional equivalent of arrest in terms of the restrictions imposed upon the suspect's freedom of movement. Second, because not all arrests are custodial, a traffic stop, while technically an arrest, does not trigger the protections of *Miranda*. Third, for much the same reason, a *Terry* stop is not custody for purposes of *Miranda*, although the citizen is forcibly restrained during the course of the interview with the officer. Fourth, an objective standard

is used to determine whether a suspect is in custody, *i.e.*, how a reasonable person would have understood the situation. An officer's uncommunicated knowledge or intent is irrelevant to the issue of custody; it may become relevant if that knowledge or intent is communicated to the suspect. Fifth, questioning at a police station is not custodial *per se*; it is merely one circumstance to be considered in determining the suspect's status.

2. Factors Relevant To Custody

This Court's broad guidance on the issue of custody has led lower federal and state courts to develop more specific criteria. The California Supreme Court has stated, "the most important considerations include (1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning." *J.A.* 471; *People v. Stansbury*, 4 Cal.4th 1017, 1050; 17 Cal.Rptr.2d 174, 193; 846 P.2d 756, 775, *cert. granted*, 114 S.Ct. 380-81 (1993). Intermediate California courts of appeal have also relied upon (5) the ratio of officers to suspects and (6) the nature of the questioning. *People v. Bellomo*, 10 Cal.App.4th 195, 199, 10 Cal.Rptr.2d 782, 784 (1992); *People v. Lopez*, 163 Cal.App.3d 602, 606, 209 Cal.Rptr. 575, 577 (1985).

Petitioner asserts that it is irrelevant whether the investigation has focused upon the suspect because that factor, involving the knowledge and intent of the investigating officers, is inconsistent with the objective standard of custody. Petitioner paints with too broad a

brush. This Court has never held that focus is irrelevant *per se*; rather, the officers's knowledge and intent have no bearing on the question of custody only if they were uncommunicated to the suspect. *Berkemer v. McCarty*, *supra*, 468 U.S. at 442; *cf. Michigan v. Chesternut*, 486 U.S. 567, 575 n. 7 (1988). Thus, one California court has sensibly held that "the focus of official investigation is irrelevant to custody unless it is somehow communicated to the defendant. Accusatory questioning is one obvious way of making manifest the investigation's focus." *People v. Bellomo*, *supra*, 10 Cal.App.4th at 200; 10 Cal.Rptr.2d at 785. Thus, factor (2) is subsumed by factor (4), the form of questioning.

The Ninth Circuit has developed a five-part test which largely overlaps the California criteria: (1) the officer's language in summoning the person interviewed; (2) the place where the interrogation occurred; (3) the degree of pressure applied to detain the suspect; (4) the duration of the detention; and (5) the extent to which the person was confronted with evidence of guilt. *United States v. Hudgens*, 798 F.2d 1234, 1236 (9th Cir. 1986); *United States v. Booth*, 669 F.2d 1231, 1235 (9th Cir. 1981). The First Circuit considers "whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation." *United States v. Streifel*, 781 F.2d 953, 961, n. 13 (1st Cir. 1986); *see United States v. Masse*, 816 F.2d 805, 809 (1st Cir. 1987). These factors closely resemble the criteria identified in *Booth*.

Based upon this Court's decisions on the

question of custody, and the lower courts' attempts to explicate them, it is possible to formulate some general guidelines. Relevant to the issue of custody are : (1) the circumstances of the initial encounter between the suspect and police; (2) the circumstances of the transportation, if any, of the suspect to the place of interrogation; and (3) the circumstances of the interrogation itself.

The first factor should be informed by this Court's Fourth Amendment jurisprudence. Thus, a court of review should determine initially whether the suspect was arrested, detained, or consented to the encounter with the police. See *Florida v. Royer*, 460 U.S. 491, 497-501 (1983). This proposition is no more than an acknowledgement that many cases which analyze the level of coercion of the initial (or pre-interrogation) encounter focus upon factors typically associated with the issue of whether a person has been seized under the Fourth Amendment. Thus, the place of the encounter, the number of officers, the language used, and the presence of weapons all have been factors upon which courts have relied in both detention cases under the Fourth Amendment and custody cases under the Fifth Amendment. Compare *Berkemer v. McCarty*, *supra*, with *Florida v. Bostick*, ___ U. S. ___, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). The common relevance of these factors should be apparent: the less restraint upon the citizen (Fourth Amendment), the less coercion to speak (Fifth Amendment). See *Berkemer v. McCarty*, *supra*, 468 U.S. at 440.

Second, the transportation of the suspect to the place of interrogation is relevant to the nature of the continuing encounter. If a person has agreed to

cooperate with police and knows that he is free to leave, *United States v. Mendenhall*, 446 U.S. 544 (1980), his decision to go with police to the station house may also be voluntary. That is a discrete issue to be determined by the totality of circumstances. *Id.*, at 557. But a person who is forcibly detained on the street, although initially subject to questioning without the rendition of *Miranda* admonitions, cannot be taken to the police station without probable cause to arrest him. See *Dunaway v. New York*, 442 U.S. 200, 206-16 (1979). Thus, a reasonable person who has been involuntarily taken to, or detained at, a police station for questioning would believe that he was under arrest. Such a person is in custody under *Miranda*.

Third, the circumstances of the questioning are obviously of transcendent importance. To be considered are, for example, the place of the interrogation; the length of the questioning; the nature of the questions, whether neutral or accusatory; the use of coercive tactics, such as threats or promises, which may implicate the Due Process Clause; and any advice by police that the citizen is free to leave at any time. This list is hardly exhaustive, but it is intended to identify some of the factors which would lead a reasonable person to believe that he is in custody.

3. Petitioner's Suggested Criteria For Custody

Relying largely upon *United States v. Griffin*, 922 F.2d 1343 (8th Cir. 1990), petitioner suggests the following "nonexhaustive" list of factors are relevant to determining whether the suspect was in custody during interrogation:

- (1) whether the suspect was informed at the time of

questioning that the questioning was voluntary, that the suspect was free to leave or [to] request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning. 922 F.2d at 1349; Brief for Pet. at 19.

Respondent does not necessarily dispute the relevance of many of these factors, but does question their importance. First, this Court has never held that police must advise persons not in custody of their legal rights. *United States v. Mendenhall*, *supra*, 446 U.S. at 555; *Schneckloth v. Bustamonte*, 412 U.S. 218, 234 (1973). The rendition by police of a "pre-Miranda" litany to every person whom they interview seems unduly burdensome.

Second, the concept of "unrestrained" freedom of movement is puzzling. Often a person's movement is restrained by circumstances having little or nothing to do with the presence of police. See *Florida v. Bostick*, *supra*. Furthermore, a *Terry* detainee is restrained but not in custody within the meaning of *Miranda*. Finally, this factor has little application to the typical situation which involves slight or varying degrees of restraint.

Third, whether a suspect initiated contact with police or voluntarily responded to questions seems both

fortuitous and irrelevant. By hypothesis, the suspect acted voluntarily in both situations. Later events have no bearing upon his initial decision to cooperate. Those subsequent events must be viewed alone to determine the issue of custody.

Fourth, although strong arm tactics may be relevant to the existence of custody, "deceptive stratagems" are not. "Whatever relevance this fact may have to other issues in the case, it has nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Oregon v. Mathiason*, *supra*, 429 U.S. at 495-96; see also, *Illinois v. Perkins*, *supra*, 496 U.S. at 297.

Fifth, police domination of the atmosphere of the questioning, involving the place, form, and length of the interrogation, is concededly relevant. Nevertheless, as *Mathiason* and *Beheler* teach, the fact that the questioning took place in a station house is not dispositive of the custody issue.

Finally, the relevance that the suspect was arrested following interrogation is not readily apparent. The ultimate result of the interrogation cannot dictate the custodial status of the individual at an earlier point in time. Events which occur after the interrogation cannot affect a reasonable person's view of his custodial status. In the absence of some statement by the police indicating to the individual who is the subject of the interrogation that he will be released or arrested at the termination of the interview, the time lapse between the interrogation and the arrest is irrelevant. To hold otherwise is to encourage the police to release individuals temporarily and then arrest them at some later date based on the information obtained from the interview.

4. Station House Questioning

This case involves the questioning of a suspect at the station house, to which he was transported. As indicated in section (2), such a factual scenario actually raises three issues. Petitioner has merged, and thereby blurred, these issues to achieve his desired objective, but his analytical framework is consequently flawed. The issues which a reviewing court must serially decide are, first, whether the suspect was detained or arrested when he was taken to the police station. If he was, then he was in custody and no further inquiry is necessary. If he was not, and instead consented to the initial encounter, the second question is whether he voluntarily consented to accompany the police to the station house. *See United States v. Mendenhall, supra*, 446 U.S. at 557. Again, if his consent was involuntary, he was in custody and his unwarned statements must be suppressed. If his consent to go to the station was valid, the court must make a third inquiry: under all the circumstances of the interrogation, would a reasonable person have believed that he was free to terminate it and leave the station? If the suspect's presence in the stationhouse is consensual, the preceding events -- *i.e.*, the consensual encounters and transportation -- play no part in the determination whether the interrogation at the police station is custodial. Respondent addresses these issues in the context of this case in part C, *infra*.

C. Petitioner Was Not In Custody

Petitioner maintains that the California courts incorrectly found that he was not in custody because they applied an erroneous standard. Specifically, he contends that their finding was tainted by their intermediate determination that petitioner was not the focus of the investigation. He argues that the interrogating officer's intent and suspicions were irrelevant to the issue of custody because they were not communicated to him. Accordingly, he submits, the judgment must be reversed.

Respondent acknowledges the California Supreme Court relied in part upon the lack of focus on petitioner as relevant to the issue of custody (J.A. 473-75; 4 Cal. 4th at 1052, 17 Cal.Rptr.2d at 194, 846 P.2d at 776-77), although it shall be noted that most of the factors which it considered -- site of the interrogation, indicia of arrest, length and form of questioning -- are objective. J.A. 475; 4 Cal.4th at 1053-54, 17 Cal.Rptr.2d at 195, 846 P.2d at 777. However, the standard employed by the state courts is really beside the point. Custody is determined by applying objective criteria to the facts as found by the trial court. Therefore, this Court may and should decide whether petitioner was in custody. State courts are in no better position to resolve this essentially legal issue. If the Court does address this question, the state courts' resolution, and the criteria they applied, are irrelevant.

For the reasons which follow, respondent submits that petitioner was not in custody on the evening of September 29, 1982. His initial meeting with police was a consensual encounter, not an arrest or detention; he

voluntarily consented to be taken to the Pomona police station for questioning; and during the questioning a reasonable person would not have believed that he or she would be prevented from leaving if a request had been made.

1. Consensual Encounter

The language employed by the police to summon the individual to an interview set the tone of the meeting. Here, the initial encounter between the police and petitioner took place at his residence. The police knocked on petitioner's door at approximately 11:00 p.m. on the evening of the child's death.^{14/} Officer Lee spoke with petitioner; three other officers were present outside the residence. While all the officers were armed, Officer Lee deliberately placed his gun where petitioner could not see it. J.A. 65-66. The evidence adduced at the suppression hearing did not establish that petitioner saw the guns in the remaining police officers' hands. J.A. 476. In any event, the police officers never pointed their weapons at petitioner and holstered them when petitioner stepped

14. While the officers went to petitioner's residence late at night, petitioner's characterization of the time frame as "in the middle of the night" Brief of Pet. at 26, is misleading.

Detective Johnston testified that time is critical in a homicide investigation. J.A. 147. Johnston further testified that because petitioner sold ice cream from a moving vehicle, he had no business address. The nature of petitioner's employment made contacting him during the day problematic. J.A. 147-48.

outside the trailer.^{15/} J.A. 57. See *Florida v. Bostick, supra*.

Officer Lee explained to petitioner that the homicide detectives were at the Pomona police station; they wanted to interview him as a *witness* to a homicide. J.A. 36, 56. This language suggested that petitioner was not a suspect and that his voluntary cooperation could assist the police in their investigation. Police officers may request assistance from the citizenry where, as here, the individual is free to disregard the request. See *United States v. Mendenhall, supra*, 446 U.S. at 554. Officer Lee asked petitioner *if* he would go to the Pomona police station for an interview. J.A. 56. The conditional language employed by Officer Lee clearly indicated that petitioner had a choice. A reasonable person under the circumstances would deem the request for a witness interview to be a genuine request rather than ordered restraint.

Miranda distinguishes between police questioning of individuals in custody and citizen witnesses.

"General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations, the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." 384 U.S. at 477-78.

15. Contrary to petitioner's assertion, the record fails to establish a "display of force" by the police officers. *Bostick, supra*.

A reasonable person would also distinguish between questioning of witnesses and custodial interrogation.

Petitioner was very cooperative with the police and readily agreed to an interview. J.A. 58. The police did not threaten or coerce petitioner before he agreed to the interview. Therefore, the initial communication between petitioner and police was consensual because a reasonable person in his position would have realized that he was free to terminate the interview.

2. Transportation

Petitioner voluntarily agreed to the requested interview at the police station. The language used by the police did not suggest that petitioner's acquiescence was compelled. After petitioner consented to the interview, Officer Lee asked petitioner if he needed transportation to the station.^{16/} J.A. 36-37. Lee afforded petitioner the opportunity to drive himself to the station. J.A. 37. Petitioner stated that he did not have any transportation. J.A. 37. Officer Lee then drove petitioner to the Pomona police station. Petitioner was seated in the front passenger seat of an unmarked police car. He was not

16. Petitioner claims that even though he was given the option of driving himself to the police station, "there is no evidence that the police intended to allow petitioner to drive himself anywhere unescorted." Brief of Pet. at 24, n. 12. As petitioner himself argues, the police officers' undisclosed intent is irrelevant. Officer Lee stated that petitioner could drive himself to the station. This statement is not fairly susceptible to the interpretation that the police would ensure petitioner's presence by forcibly escorting him there.

handcuffed. J.A. 37-38, 73, 422. He never objected to the ride or indicated that he was compelled to accept Officer Lee's offer of transportation. This method of transportation was not suggestive of an involuntary detention.

The California Supreme Court properly concluded that petitioner's transportation to the police station was not acquiescence to a display of authority.

"They [the police] solicited his voluntary cooperation, asked if he wanted to drive himself to the station, and conducted him there under no restraint. This was hardly an assertion of authority such that the reasonable person would consider there was no choice but to obey." J.A. 476.

Thus, petitioner consented to the method of transportation and therefore to the transportation itself.

3. Circumstances Of The Interrogation

Petitioner agreed to an interview at the Pomona police department. When petitioner and the Baldwin Park officers arrived at the station, they entered through the sally port. J.A. 40. This was the only entrance from the police parking lot. J.A. 401. The Baldwin Park police officers asked a local officer where to take petitioner for an interview. J.A. 62. They were directed to an interview room on the ground floor. J.A. 62. The officers escorted petitioner to this room. J.A. 40.

Petitioner argues that he was in custody because the interview room was located in a secured part of the

police station. The fact that a police station also has a jail is not significant or dispositive where, as here, petitioner agreed to an interview in the police station. While the interview room was in close proximity to the jail facilities, petitioner and the officers walked past the booking counter. J.A. 40. The interview room itself was the same configuration as normal interview rooms, containing a table and chairs. J.A. 115. There were no bars or unique characteristics which made the interview room peculiarly intimidating.^{17/} J.A. 40. In light of petitioner's consent to an interview at the police station, the location of the interview room did not convert the encounter into a custodial interrogation.^{18/}

Lieutenant Johnston conducted petitioner's interview. Only Lieutenant Johnston and Officer Bell were present for the interview. Petitioner was not handcuffed or physically restrained. J.A. 73. At the beginning of the interview, Johnston advised petitioner that he was investigating the circumstances surrounding

17. Petitioner emphasizes that one could not leave the interview room without the assistance of a police officer because it locked from the outside. The door only locked if it was pulled closed. J.A. 404. The door was normally left open. J.A. 405. Lieutenant Johnston did not recall if the door was shut during the interview. J.A. 116.

Furthermore, all the interview rooms in the Pomona police station locked when closed. J.A. 405. Nothing would distinguish the ground floor interview room used by the officers here from other police interview rooms. Thus, a reasonable person who agreed to a station house interview would not consider this feature as indicative of custody. Furthermore, petitioner could not have known if it was locked.

18. Petitioner never voiced any objection to the location of the interview room and never attempted to withdraw his consent to the interview. J.A. 62, 75.

the disappearance of a young girl from the Baldwin Park area. J.A. 258. Johnston told petitioner that he was a possible witness. J.A. 248, 258. This statement reiterated Officer Lee's earlier representation that petitioner was only a possible witness. While a reasonable person under the circumstances would not be aware of the particular information uncovered by the police investigation, the police here specifically informed petitioner that they wanted to question him as a *witness*. The officers communicated their subjective belief regarding petitioner's status as a witness. While "a policeman's unarticulated plan has no bearing on the question whether a suspect was in custody at a particular time," *Berkemer v. McCarty*, *supra*, 468 U.S. at 441-42, the police officers' truthful characterization of petitioner as a witness provides fair support for the conclusion that a reasonable man in petitioner's position would have considered himself free to leave. Where, as here, the police officer's perspective is communicated to the interviewee, his subjective intent is relevant to a custodial determination. *See Michigan v. Chesternut*, *supra*, 486 U.S. at 575, n. 7 [police officer's subjective intent "relevant to Fourth Amendment implications of police conduct only to the extent that that intent has been conveyed to the person confronted."]. Treatment of an individual as a witness "cannot fairly be characterized as the functional equivalent of formal arrest." *Berkemer v. McCarty*, *supra*, 468 U.S. at 442.^{19/}

19. Petitioner states that the California court's analysis "implies that the police have no obligation to inform a citizen of his constitutional rights unless the citizen has first challenged the authority of the police and they have overcome his resistance." Brief of Pet. at 26. Petitioner's position would mandate that the police

To this extent, petitioner's contention that the state courts used an invalid criterion to determine custody is highly misleading if not completely fallacious.

This Court has recognized that all police questioning is in some respects coercive, but police officers should not be compelled to admonish all citizens with whom they have contact.

"Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house" *Oregon v. Mathiason*, *supra*, 429 U.S. at 495.

The extent to which an individual is confronted with evidence of guilt is pertinent to an inquiry regarding custodial status. "The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe" *Miranda*, 384 U.S. at 455. The vocalization of police confidence in an individual's guilt supports a

admonish every person with whom they have contact. Certainly, neither *Miranda* nor the Fifth Amendment would be served by this burdensome requirement. This Court has never held that police have a duty to provide legal advice to persons not in custody, *see United States v. Mendenhall*, *supra*; *Schneckloth v. Bustamonte*, *supra*, and should decline to do so now.

reasonable determination that the individual is in custody. "[T]he coercion inherent in custodial interrogation derives in large measure from an interrogator's insinuations that the interrogation will continue until a confession is obtained." *Minnesota v. Murphy*, *supra*, 465 U.S. at 433; *see Berkemer v. McCarty*, *supra*, 468 U.S. at 433.

Here, the form of questioning at the interview was not accusatory. Petitioner's interview was predominantly narrative in form. Lieutenant Johnston merely asked petitioner to describe his activities on the day of the abduction and to relate any information he knew about the victim and other individuals in the area of the abduction. The police did not attempt to obtain a confession but a witness's statement. "[T]here is no indication whatsoever that the agents engaged in the type of 'strong arm tactics,' that would have justified a belief on [petitioner's] part that he was in custody." *United States v. Hocking*, 860 F.2d 769, 773 (7th Cir. 1988); *see United States v. Jones*, 630 F.2d 613, 616 (8th Cir. 1980).

The interview here was brief, lasting only 20 to 30 minutes. Lieutenant Johnston asked only "a modest number of questions."^{20/} *Berkemer v. McCarty*, *supra*, 468 U.S. at 442. The shorter an encounter, the less intrusive its nature and the less likely that one will consider that the level of restraint was equivalent to a formal arrest. Here, the short duration of the interview supports a determination that the statement was not the product of custodial interrogation. *See Berkemer*, 468 U.S. at 441 [short period of detention not custodial]; *Beheler*, 463 U.S.

20. Lieutenant Johnston conducted the interview. Officer Bell was only an observer and asked no questions. J.A. 157, 228-29.

at 1122 [30 minute interview in station house not custodial]; *United States v. Hudgens, supra*, 798 F.2d at 1237 [45 minute interview at arranged location not custodial].

While the police did not specifically tell petitioner that he was not under arrest, they did tell him that they wanted to speak with him "as a possible witness." J.A. 36. This statement fairly implies that the interview would be limited in duration and that petitioner would be free to leave. The police said nothing to suggest that petitioner was in custody. *See United States v. Wynne*, 993 F.2d 760, 764 (10th Cir. 1993) [absence of statement by police suggesting custody relevant]. At no point in time before his arrest was petitioner informed that the interview would not be temporary. *Berkemer*, 468 U.S. at 441. The police gave petitioner no reason to believe that the interview "would be other than temporary." *United States v. Bengivenga*, 845 F.2d 593, 600 (5th Cir. 1988)(en banc); *see United States v. Phillips*, 812 F.2d 1355, 1362 (11th Cir. 1987)(per curiam) [defendant never told was under arrest.]

To summarize, petitioner voluntarily agreed to an interview at the police station and accepted the offer of transportation by the police. Once at the station, he went to an interview room where the homicide investigator told him that he was a potential witness to a child's abduction. This one investigator conducted a nonconfrontational 20 to 30 minute interview. Petitioner never asked to terminate the interview or to leave. Petitioner was never told that the interview would not be temporary.

Judged by the information available to petitioner

at the time of his interview, a reasonable person under the circumstances would not have considered the interview a custodial interrogation. Neither should this Court.

CONCLUSION^{21/}

Accordingly, for the reasons stated, respondent respectfully requests that the judgment of the California Supreme Court be affirmed.

DATED: January 13, 1994

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21. Petitioner suggests that this Court defer ruling on this case because he was convicted under the California 1978 death penalty statute, the constitutionality of which is challenged in *Tuilaepa v. California*, 93-5131, and *Procter v. California*, 93-5161. Brief of Pet. at 2, n. 1. The issue upon which petitioner now seeks relief is outside the scope of this Court's grant of certiorari. Thus, this Court should decline petitioner's request to defer a decision in this case.

No. 93-5770

Supreme Court, U.S.

FILED

FEB 15 1994

OFFICE OF THE CLERK

In the
Supreme Court of the United States
October Term, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Writ Of Certiorari
To The Supreme Court Of The
State Of California

PETITIONER'S REPLY BRIEF

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(Appointed by This Court)

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INTRODUCTION

Respondent State of California acknowledges that the standard for determining custody for *Miranda* purposes is an objective one, and implicitly concedes that the state courts erred in determining that petitioner was "in custody" only when he became the "focus" of the investigation in the mind of the interrogating officer. Respondent's Brief ("Resp. Br.") at 21-22, 29; see J.A. 432-33, 477. Respondent, however, would now rewrite the question on which certiorari has been granted as if it involves only a challenge to the sufficiency of the evidence to support the trial court's findings. See Resp. Br., "Question Presented." Respondent not only ignores the lack of any relevant factual findings by the trial court (see J.A. 432-33), but also mischaracterizes the record in numerous respects.¹

A more fundamental flaw in respondent's analysis is that it would have this Court examine in isolation, or serially, each of the elements bearing on the issue of "custody," while ignoring the cumulative effect of those elements on a reasonable person in petitioner's situation at the time of the interrogation. For example, respondent argues that, since petitioner allegedly "agreed" to go to "the police station" for questioning, the circumstances surrounding his initial encounter with the police and his

¹ A glaring example of respondent's distortion of the record is the repeated assertion that petitioner's interrogation took place "at the police station" or "station house" (e.g., Resp. Br. at 11, 14, 16, 28, 33), and in the "proximity of" or "near" the jail (*id.* at 11, 14, 34). In fact, petitioner was questioned *in* the jail. J.A. 73, 260, 401-03. Numerous other mischaracterizations of the record are noted below.

transportation to the jail "play no part" in determining whether the interrogation was custodial. Resp. Br. at 28. The argument completely overlooks that it is the sum total of the events, as perceived by a reasonable person in petitioner's position at the time of his interrogation, that determines the issue of custody:

The question of whether someone believes that he is free to leave requires the court to examine the interaction between the citizen and the police officer *as it evolves*. Additional restraints, directions, questions or commands can at any time during an interrogation change a suspect's perception of whether he is free to go.

U.S. v. Camacho, 674 F.Supp. 118, 122 (S.D.N.Y. 1987) (emphasis added), *aff'd*, 868 F.2d 1268 (2d Cir. 1988), *cert. denied*, 493 U.S. 1034 (1990); *see also California v. Beheler*, 463 U.S. 1121, 1125 (1983) (*per curiam*) (whether defendant is in custody for *Miranda* purposes is to be determined by the "totality of the circumstances").

However one might view in the abstract each separate step or element in the events that preceded petitioner's interrogation, as respondent urges (Resp. Br. at 28), a reasonable person in petitioner's position at the time of the interrogation would necessarily be subject to the cumulative effect of all the elements: the late hour of the night, the confrontation at the trailer by four officers with guns out of their holsters and "in a ready position" (J.A. 209), the "request" to accompany the officers to the police station, the transportation in one police car with a second car following, being escorted into the jail itself, and the absence of anyone but police at the interrogation. It is untenable to suggest that a reasonable person in

petitioner's position, finding himself isolated in "a locked interrogation room in the secure area of the jail" (J.A. 473) and unable to leave without the assistance of his interrogators, would disregard the build-up of events which brought him there in evaluating whether he was free to avoid questioning.

Looking at the undisputed facts solely from the perspective of a reasonable man in petitioner's position – as respondent admits the courts below failed to do – it is obvious that respondent failed to meet its burden of proving that petitioner was not " 'in custody' for practical purposes" (*Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)) during his interrogation.²

ARGUMENT

I. PETITIONER'S "AGREEMENT" TO ACCOMPANY THE POLICE FOR QUESTIONING WAS NOT VOLUNTARY IN VIEW OF THE POLICE SHOW OF FORCE AT THE TIME OF THE ENCOUNTER.

Respondent erroneously asserts that petitioner's confrontation with the police at 11 p.m., and his transportation

² Respondent says that this Court may and should decide whether petitioner was in custody. Resp. Br. at 29. Petitioner agrees. We reiterate, however, that California has allocated to respondent the burden of proving that petitioner was *not* in custody at the time of his interrogation. *People v. Sam*, 71 Cal.2d 194, 201-02, 454 P.2d 700, 703-04, 77 Cal.Rptr. 804, 807-08 (1969). Accordingly, to the extent that respondent contends that there are inadequacies in the record on certain points, respondent is not entitled (as its brief seems to assume) to have those points determined in respondent's favor.

to the jail for questioning, were "consensual encounter[s]." Resp. Br. at 30, 33. The claim finds no support in the record.

The argument that petitioner "consented" to an interview rests primarily on the assertion that the police officers employed "conditional language." Resp. Br. at 31. However, respondent's discussion of the "conditional" language and petitioner's alleged responses (Resp. Br. at 30) implies incorrectly that the officers purported to testify to the words used. They did not. Rather, the officers largely testified to the substance of the conversations. The record does not purport to contain the actual words spoken on this point by either the police or petitioner. See J.A. 36-37, 56-58.³

More importantly, respondent would ignore the timing and other circumstances of petitioner's encounter with the police. A "request" by four officers fanned out around the door to the trailer where petitioner was staying, with guns in their hands, at night, bears no resemblance to the manner in which the defendants were invited to the police station in prior cases in which this Court has found station house questioning to be non-custodial.⁴ There is also no resemblance between this case

³ Officer Lee testified at one point that he "told" petitioner "if he would accompany me to the Pomona Police Department." J.A. 36. At another point he said that he "asked him if he would accompany me to the Pomona Police Department, and if he didn't have transportation, I would provide it for him." J.A. 56. The actual words spoken are not set forth.

⁴ In *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*per curiam*), the defendant "came voluntarily to the police station" after he had contacted the police by telephone in response to a note left by an officer at his residence, and was "immediately

and what *Miranda* referred to as "[g]eneral on-the-scene questioning," contrary to respondent's suggestion. Resp. Br. at 31 (quoting *Miranda v. Arizona*, 384 U.S. 436, 477 (1966)).

Respondent attempts to justify the urgency that is implicit in sending four officers to pick up petitioner late at night by pointing out that "time is critical in a homicide investigation." Resp. Br. at 30 n.14. This misses the point. Petitioner assumes that the police felt it was urgent that Sergeant Johnston question petitioner when he did. Indeed, that urgency manifested itself in the number of officers sent to pick up petitioner, in the lateness of the hour, and in the fact that the officers drew their guns. Given the indications of urgency, the fact that petitioner appeared to the officers to be "very cooperative" and "agreed" to accompany them (Resp. Br. at 10, 32) does not establish that the encounter was "consensual" (*ibid.*), as respondent argues, but only that petitioner chose not to resist:

Consent that is the product of official intimidation or harassment is not consent at all. Citizens do not forfeit their constitutional rights when they are coerced to comply with a request that they would prefer to refuse.

informed that he was not under arrest." Similarly, in *California v. Beheler*, 463 U.S. at 1122, the defendant himself initiated the first contact with the police, and he was "specifically told . . . that he was not under arrest" before he was questioned.

Petitioner was never offered the opportunity to be questioned at the trailer where he was staying or to contact the police on his own later to arrange an interview.

— *Florida v. Bostick*, ___ U.S. ___, 111 S.Ct. 2382, 2388 (1991); see also *People v. Boyer*, 48 Cal.3d 247, 263-64, 272, 768 P.2d 610, 617, 623, 256 Cal.Rptr. 96, 103, 109 (1989), *cert. denied*, 493 U.S. 975 (1989) (defendant in custody even though he “agreed” to go to the police station, he was not handcuffed and the police car doors were not locked).

Respondent also asserts that “the location of [officer] Lee’s gun prevented petitioner’s view of the weapon,” implying that petitioner was unaware of the guns in the officers’ hands. Resp. Br. at 10 n.9; see also *id.* at 30-31. Officer Lee, however, testified only that *he* attempted to hold his gun behind his leg so that petitioner might not see it. J.A. 63, 65. None of the other officers claimed to have done likewise. See J.A. 55, 63-65, 207-08, 380-81. Moreover, all four officers holstered their weapons only *after* petitioner was ~~outside~~ the trailer. J.A. 57. The trial court made no finding that petitioner never saw the weapons.⁵ Respondent’s contention that “[t]he evidence adduced at the suppression hearing did not establish that petitioner saw the guns in the remaining police officers’

⁵ Respondent’s assertion that the officers who accompanied Lee were “at the end of the trailer” (and thus presumably out of petitioner’s sight) (Resp. Br. at 10 n.9) is inconsistent with the record. Sergeant Higgenbotham, the leader of the group, testified that the officers had discussed their deployment and decided *not* to place themselves at the end of the trailer. J.A. 213. Instead, two officers went to the door while Higgenbotham and another officer stood about 10 feet away just off to the left, all facing the door of the trailer. J.A. 207, 380-82.

hands” (Resp. Br. at 30) fails to acknowledge respondent’s burden of proof; there was no evidence that petitioner could *not* see the guns.⁶

Respondent also contends that, “[t]he police gave petitioner no reason to believe that the interview ‘would be other than temporary,’” citing *Berkemer*. Resp. Br. at 38. But *Berkemer* involved questioning of a motorist incident to an ordinary traffic stop, which this Court said is “quite different from station house questioning, which frequently is prolonged, and in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.” 468 U.S. at 438. Traffic stop questioning is presumptively temporary and brief and, more important, is public. *Berkemer* does not support a presumption that petitioner’s interrogation in the jail would be brief.

⁶ Relying on *Florida v. Bostick*, ___ U.S. ___, 111 S.Ct. 2382 (1991), respondent also argues that petitioner’s initial encounter with the officers involved no “display of force” because the officers did not point their weapons at petitioner and holstered them when he came out of the trailer. Resp. Br. at 30-31 & n.15. In *Bostick*, this Court noted that the fact that an officer carried a zippered pouch containing a gun during a search of a bus passenger did not render the encounter nonconsensual, since the officer never removed the gun from its pouch. 111 S.Ct. at 2385.

Carrying a zippered holster containing a weapon is not remotely like holding a loaded weapon in the hand in a “ready position,” as did the officers here. Moreover, the fact that “the officers holstered their weapons when petitioner exited the trailer” (Resp. Br. at 10 n.9) does not eliminate the compulsive pressures inherent in the initial display of force.

Respondent appears to concede that the police never advised petitioner that he was free to refuse to accompany them (*see* Resp. Br. at 25-26), but argues that the police had no obligation to do so. Contrary to the implication in respondent's brief, petitioner does not contend that the police are required to recite "a 'pre-Miranda' litany" to "every person with whom they have contact." *See* Resp. Br. at 26, 35-36 & n.19. Rather, petitioner submits that where, as in this case, a person whom the police wish to question could reasonably conclude that he is not "'at liberty to ignore the police presence and go about his business'" (*Florida v. Bostick*, ___ U.S. ___, 111 S.Ct. at 2387, quoting *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988)), the police can nonetheless easily dispel any inherent coercion by informing the subject that he is free to refuse the police request. Where the police do not do so, and also proceed to interrogate without a *Miranda* warning, the state should not be heard to argue that there was no custodial interrogation simply because the subject did not resist or question the police authority.⁷ It is significant that in the very cases from this Court upon which respondent principally relies for its argument that petitioner was not in custody, the Court emphasized that the police had explicitly told the defendants that they were free to refuse the police requests, thus dispelling any impression of coercion.⁸

⁷ Respondent's assertion that petitioner "never objected" (Resp. Br. at 33 & 34, n.18), appears to assume that a reasonable citizen who confronts four officers with their guns out will question their authority. This proposition is untenable.

⁸ *Oregon v. Mathiason*, 429 U.S. at 495 (court determined that the defendant was not in custody for *Miranda* purposes in part

II. UNDER THIS COURT'S FOURTH AMENDMENT JURISPRUDENCE, PETITIONER WAS SUBJECTED TO AN ILLEGAL SEIZURE.

Respondent suggests that whether petitioner was in custody when he was questioned can be answered, at least in part, by asking whether he was "seized" under this Court's Fourth Amendment holdings. Resp. Br. at 24. Although petitioner does not contend that every Fourth Amendment "seizure" triggers an obligation to give a *Miranda* warning, we submit that petitioner was subjected to a "'restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. at 1125, quoting *Oregon v. Mathiason*, 429 U.S. at 495. Nothing in this Court's Fourth Amendment jurisprudence justifies questioning in the jail without a *Miranda* warning.

The circumstances under which petitioner was picked up and questioned are much more coercive than those in *Dunaway v. New York*, 442 U.S. 200, 212, 219 (1979), in which this Court held that the defendant's responses to station house questioning had to be suppressed as the fruit of an illegal arrest. Dunaway's initial

because he had been "informed that he was not under arrest"); *California v. Beheler*, 463 U.S. at 1122, 1125 (suspect who was "specifically told" he was not under arrest was not in custody for *Miranda* purposes); *Florida v. Bostick*, ___ U.S. ___, 111 S.Ct. at 2385 (fact that police officers specifically advised defendant that he could refuse consent to search relevant to question whether consent was voluntary); *United States v. Mendenhall*, 446 U.S. 544, 558 (1980) ("it is especially significant that the respondent was twice expressly told that she was free to decline to consent to the search").

encounter with the police took place in mid-morning, petitioner's late at night; the officers who summoned Dunaway to the station never drew their guns, unlike the officers who confronted petitioner; Dunaway, unlike petitioner, was apparently never brought into the jail; and Dunaway – but not petitioner – received *Miranda* warnings. See *Dunaway*, 442 U.S. at 203, 223 (Rehnquist, J., dissenting); J.A. 42, 55, 60-64, 74, 259-60, 380-82. If Dunaway's questioning violated the Fourth Amendment, then *a fortiori* petitioner's interrogation, following "[a] midnight arrest with drawn guns" (*Dunaway*, 442 U.S. at 220 (Stevens, J., concurring)), did as well. See also *Hayes v. Florida*, 470 U.S. 811 (1985) (absent probable cause for arrest, transportation of suspect to station house for fingerprinting is illegal arrest).

III. THE POLICE-DOMINATED ENVIRONMENT IN WHICH PETITIONER WAS INTERROGATED WOULD HAVE LED A REASONABLE PERSON TO BELIEVE THAT HE WAS IN CUSTODY.

Respondent's attempt to portray this case as one involving routine "station house" questioning is disingenuous. See, e.g., Resp. Br. at 14, 16, 28, 32, 33, 34. Petitioner was interrogated in the jail. See J.A. 73, 260, 401-03. That fact, particularly in view of the circumstances leading to petitioner's presence there, would lead a reasonable person to believe he was restrained to the degree associated with arrest.

Respondent further asserts that, because "[p]etitioner agreed to an interview in the police station," the precise location of the interrogation is not "significant." Resp. Br.

at 33-34. This is a *non sequitur*. Even assuming, *arguendo*, that petitioner consented to go to the "station house," he did not agree to be taken to the jail. To say that the location is not "significant" is to suggest that a reasonable person does not know the difference between a police station – essentially an office facility – and a jail.

Perhaps recognizing that an interrogation in a jail represents a setting in which *Miranda* warnings should be given, respondent largely ignores the site of the questioning and instead asserts that *Miranda* warnings were unnecessary because the questions asked by Sergeant Johnston were not "accusatory." Resp. Br. at 36-37. This argument fundamentally misconceives the requirements of *Miranda*. To carve out an exception to *Miranda* based on whether the questioning of the suspect is or is not "accusatory" would completely eliminate the clear, black-letter aspects of the *Miranda* holding, as well as lead to incalculable abuse. Not only would such an exception mean that application of *Miranda* would depend upon each police interrogator's style of questioning, but there would be no hope for consistency in applying the *Miranda* rule to particular cases.⁹

⁹ In determining whether the duty to give *Miranda* warnings attaches, the lower courts have rejected the artificial distinction, which respondent urges this Court to draw here, between "accusatory" and "non-accusatory" questioning. E.g., *People v. Ellingsen*, 258 Cal.App.2d 535, 541, 65 Cal.Rptr. 744, 748 (1968) ("Nowhere in the [*Miranda*] opinion does the court distinguish the accusatory phase of an *in-custody* interrogation from the investigatory phase") (emphasis in original); see also *People v. Turner*, 37 Cal.3d 302, 318, 690 P.2d 664, 678, 208 Cal.Rptr. 196, 205 (1984) ("no fine distinction can be made as to the officer's intention when a suspect is subjected to *express questioning*")

There is, moreover, no basis on this record for the characterization of petitioner's interview as non-accusatory. The record does not disclose the actual questions asked by Sergeant Johnston. While petitioner had been told he was a possible witness, that did not exclude the possibility that he was a suspect. See J.A. 56, 117, 248. As Sergeant Johnston explained, "[a]nybody that was present in Baldwin Park at the time in question was a possible witness as well as a possible suspect." J.A. 323. The interview, in fact, covered petitioner's whereabouts and movements during the entire day that Robyn Jackson disappeared, including the six- to eight-hour period *after* petitioner had left the area in which she had last been seen. J.A. 75-79, 120-22, 131-34.¹⁰

In short, the record shows nothing about the questioning of petitioner that would support dispensing with the requirements of *Miranda*.

(emphasis in original), *overruled on other grounds*, *People v. Anderson*, 43 Cal.3d 1104, 742 P.2d 1306, 240 Cal.Rptr. 585 (1987).

¹⁰ Johnston conceded that his questioning was designed, at least in part, to determine the extent "of [petitioner's] involvement [in] the crime" (J.A. 138; see also J.A. 83-88, 131-32). As noted in Fred E. Inbau et al., *Criminal Interrogation and Confessions* 74-75 (3d ed. 1986),

One favored tactic for evaluating an alibi is to ask the suspect for a detailed account of his activities before and after, as well as during the crime period. . . . Criminal investigators . . . may obtain indications of a suspect's guilt or innocence by using this technique.

CONCLUSION

For the foregoing reasons, and for the reasons stated in petitioner's opening brief, the judgment of the Supreme Court of California should be reversed.

Dated: February 15, 1994.

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No. 93-5770

Supreme Court, U.S.

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In The
Supreme Court of the United States
October Term, 1993

ROBERT EDWARD STANSBURY,
Petitioner,

vs.

STATE OF CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

BRIEF AMICUS CURIAE
OF
AMERICANS
FOR
EFFECTIVE LAW ENFORCEMENT, INC.,
IN SUPPORT OF NEITHER PARTY.

(List of Counsel on Inside Front Cover)

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This Brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondent. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.

INTEREST OF AMICUS CURIAE

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* over eighty-five times in the Supreme Court of the United States and over thirty-five times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

In this case *amicus curiae* seeks to bring before this Court the view of law enforcement at the state and local level on the law with respect to the issue of custody under *Miranda v. Arizona*, 384 U.S. 436 (1966), based upon our many years of experience as a national professional organization interacting with law enforcement agencies directly through our training programs, publications, and technical assistance.

ARGUMENT

DEFENDANT WAS NOT IN CUSTODY WITHIN THE PURVIEW OF *MIRANDA v. ARIZONA* UNTIL SUCH TIME AS HE MENTIONED THAT HE HAD DRIVEN A CAR MATCHING A DESCRIPTION OF A CAR REPORTED TO HAVE BEEN USED IN THE COMMISSION OF THE CRIME; THIS COURT SHOULD RETAIN THE OBJECTIVE REASONABLENESS TEST FOR DETERMINING *MIRANDA* CUSTODY, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE SUBJECTIVE INTENT OF LAW ENFORCEMENT OFFICERS, WHERE RELEVANT.

The California Supreme Court ruled in this case, *People v. Stansbury*, 4 Cal.4th 1017, 17 Cal.Rptr.2d 174, 846 P.2d 756 (1993), that where the defendant was asked by the police to come to a police station to give a statement as a potential witness to the abduction and murder of a child, and he did so freely and without any indicia of restraint by the police who did not believe at the time that he was a suspect, he was not "in custody" at the police station within the purview of *Miranda* until such time as he made an incriminating admission during the interview. The California Supreme Court noted the "[d]efendant was very cooperative and agreed to come in . . . for an interview. He was given the choice of whether to accept a ride with the police or to drive his own car." 846 P.2d at 776.

While the California court considered a number of factors in reaching its conclusion—including the fact that the police did not consider the defendant to be a suspect until he made the statement noted—it is clear that the court employed an objective reasonableness test centering on what a reasonable person in the position of the defendant would have believed concerning his position at the time. The court correctly

applied the rule adopted by this Court to the effect that *Miranda* warnings are required prior to questioning only when a person has been taken formally into custody or otherwise deprived of his liberty in any significant way, or led to believe as a reasonable person, that he has been thus deprived. *Beckwith v. United States*, 425 U.S. 341 (1976); *Oregon v. Mathiason*, 429 U.S. 492 (1977); *California v. Beheler*, 463 U.S. 1121 (1983); *Berkemer v. McCarty*, 468 U.S. 420 (1984).

Amicus submits that the experience of the last two decades has shown in thousands of police interrogations that the objective reasonableness test of *Beckwith-Mathiason-Beheler-McCarty* is a reasonable and workable approach to determining the issue of *Miranda* custody. Our experience as a national professional organization interacting with law enforcement agencies directly through our training programs, publications, and technical assistance, has demonstrated that the test is a form of "bright line" guidance that law enforcement officers can readily understand and apply. We ask the Court not to change the test as it presently exists.

Amicus has no quarrel with the California court's consideration that the officers' knowledge and intent would be relevant to a finding of *Miranda* custody. That factor would be a part of the totality of the circumstances in many a typical case. We would not think, however, that an officer's subjective beliefs would carry weight unless they were actually conveyed to the person by word or deed, in applying the reasonable person test. At any rate, it is clear from the court's opinion that it looked to the totality of the circumstances—not one factor in isolation—in reaching its conclusion that a reasonable person in the defendant's position would not believe that he had been deprived of his liberty in any significant way until the damaging remark was made by defendant.

The mere fact that a witness to a crime is interviewed at a police station should not give rise to any special requirement of *Miranda* warnings simply because the atmosphere may be "potentially intimidating." This Court has never adopted such a position and it would not be necessary to do so since the objective test applied by this Court adequately covers both potential witnesses and actual suspects. "... [T]he ultimate inquiry" this Court has said, "is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983), quoting from *Oregon v. Mathiason*, *supra*, 429 U.S. at 495.

Amicus submits that every police-citizen encounter has some potential for being "intimidating." That is not, however, the test for *Miranda* custody. We believe that this Court should retain the "bright line" rule it has developed for determining that issue, while reaffirming that courts are to continue considering the totality of the circumstances in resolving the issue, including—where relevant—the knowledge and beliefs of law enforcement officers.

CONCLUSION

Amicus urges this Court to affirm the decision of the court below on the basis of the precedents of this Court and sound judicial policy.¹

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¹ The present case is another example of why *Miranda v. Arizona* should be overruled, or modified, as suggested by *amicus* in its recent brief before this Court in *United States v. Green*, #91-1521. In our brief considerable documented evidence was presented to establish that an inordinate amount of valuable judicial time and effort has been expended on the many issues—such as the one in the instant case—that were created by the *Miranda* mandate. See “*Miranda v. Arizona—Is It Worth the Cost?*,” 24 *Calif. Western Law Rev.* 185-200 (1987). The law enforcement community and the general public have sustained serious losses as well.

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BRIEF OF AMICUS CURIAE,
ORANGE COUNTY DISTRICT ATTORNEY,
STATE OF CALIFORNIA, IN SUPPORT OF THE
JUDGMENT BELOW, BUT IN OPPOSITION TO THE
RATIO DECIDENDI OF THE CALIFORNIA SUPREME
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QUESTION PRESENTED

May a trial court determine that a person is not in custody for Miranda purposes based on the officer's subjective opinion that the person was not a suspect?

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INTEREST OF AMICUS CURIAE

As public prosecutor in one of California's most populous counties, amicus has direct, daily experience with *Miranda* "custody" issues, both in police consultation and training and in trial court litigation. To the extent that decisions of the California Supreme Court on such issues may not properly reflect the teachings of this Court's decisions, confusion and inconsistency result for suspect, officer, litigator and jurist alike. Amicus has an interest in helping the state to identify deviations from controlling precedent of this Court, in order to clarify for all those affected the nature of the concept of *Miranda* "custody," so that rights may be protected without inappropriate restriction on lawful interrogation.

SUMMARY OF ARGUMENT

Although this Court has repeatedly explained that *Miranda* "custody" is essentially formal arrest or equivalent restraint, and that this degree of coercive restraint is to be evaluated objectively, from the viewpoint of a reasonable person in the suspect's position, the California jurisprudence on this issue has frequently had resort to a list of "factors" (including the interrogating officer's subjective focus of suspicion) that cannot be reconciled with the *Miranda* rationale, or with this Court's "custody" decisions. In reaching its conclusion that petitioner was not in custody during the interrogation at issue in this case, the California Supreme Court relied on an improper analysis, and its decision perpetuates an unworkable definition, of *Miranda* "custody."

Petitioner was not in custody on the facts found – not because of the absence of subjective suspicions on the part of the officer, but because of the absence of any objective indications that petitioner's liberty was officially curtailed to the degree associated with a formal arrest.

ARGUMENT

California cannot escape the ghost of *Escobedo*. Although the Sixth Amendment holding of *Escobedo v. Illinois*, 378 U.S. 478 (1964), was limited to its own facts in *Johnson v. New Jersey*, 384 U.S. 719, 733-734 (1966), and was seriously questioned "in retrospect," in *Kirby v. Illinois*, 406 U.S. 682, 689 (1972), and *United States v. Gouveia*, 467 U.S. 180, n.5 (1984), and was disassociated from any connection with *Miranda v. Arizona*, 384 U.S. 436 (1966) in *Moran v. Burbine*, 475 U.S. 412, 430 (1986), California courts have not broken the spell. *Escobedo*'s list of significant "factors" in applying its holding – including focus of suspicion, accusatory questioning and stationhouse situs – was adopted by California in *People v. Dorado*, 62 Cal.2d 338 (1965), purporting, like *Escobedo*, to find a violation of the right to counsel, even though such a right had not yet attached. Although the *Miranda* court did not transplant *Escobedo*'s Sixth Amendment factors when establishing police procedures to effectuate the Fifth Amendment privilege against compelled self-incrimination (*Miranda*, *supra*, 384 U.S. 436, n.4), California courts did so, without analysis or discussion.

Thus, the decision of the California Supreme Court in the instant matter had reference to "(1) the site of the interrogation, (2) whether the investigation has focused on the subject, (3) whether the objective indicia of arrest are present, and (4) the length and form of questioning." *People v. Stansbury*, 4 Cal.4th 1017, 1050 (1993). Cited as authority for this four-factor test of custody was that court's decision in *People v. Boyer*, 48 Cal.3d 247, 272 (1989). But *Boyer* relied on *People v. Herdan*, 42 Cal.App.3d 300, 307 (1974), which relied on *People v. White*, 69 Cal.2d 751, 761 (1968), which relied on *People v. Kelley*, 66 Cal.2d 232, 245 (1967), which, citing *People v. Dorado*, *supra*, 62 Cal.2d at 353, declared: "It must be held that the confession was not admissible because secured in violation of the rules announced in *Escobedo*."

Escobedo's holding, of course, has nothing to do with *Miranda*'s rationale – that apparent police custodial interrogation is presumptively compelling, and that warnings serve to neutralize the presumed compulsion. And of the four factors derived by the California Supreme Court from *Escobedo*, only one – presence of the objective indicia of arrest – approximates this Court's definition of "custody" as "the functional equivalent of formal arrest," *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984), or as "formal arrest, or restraint on freedom of movement of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (incidentally rejecting, in footnote 1, the state's four-factor definition in *People v. Herdan*, *supra*, 42 Cal.App.3d 300, which was nevertheless revived in *Boyer* and *Stansbury*).

The three remaining factors simply are not indicative of the degree of coercive restraint apparently present.

This Court has repeatedly held that voluntary appearance at the police station for questioning is not to be equated with custody, where no indications of restraint are present. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977); *California v. Beheler*, *supra*, 463 U.S. 1121, 1125. The Court has likewise rejected the argument that an official's subjective focus of suspicion creates custody. *Beckwith v. United States*, 425 U.S. 341, 345 (1976); *Minnesota v. Murphy*, 465 U.S. 420, 431 (1984). And the length and form of questioning are more relevant to the issue of whether interrogation has occurred, than to a determination of whether or not arrest-like restraint is evident. *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980).

For all that appears from the record, the circumstances of the interrogation in this case are "remarkably similar," *California v. Beheler*, *supra*, 463 U.S. 1121, 1123, to those ruled noncustodial in *Beheler* and *Mathiason*. The California Supreme Court need have gone no further in support of its holding than drawing this parallel. That the court nevertheless ventured back into the four-factor fog reveals the continuing confusion about *Miranda* custody in this state; indeed, the extent to which *Miranda* custody remains misunderstood nearly three decades after its first discussion is evident from the fact that the police officer interrogating petitioner stopped questioning him soon after becoming suspicious and gave him *Miranda* warnings, despite the lack of any objective change in his liberty status, and from the fact that the trial judge suppressed all statements made after the "focus of suspicion" (again, regardless of the absence of restraint), and from the fact that the California Supreme Court relied on this same faulty analysis in support of its holding.

The California Supreme Court further misstated the definition of "custody" as occurring whenever a suspect is physically deprived of his freedom of action "in any way." *People v. Stansbury*, *supra*, 4 Cal.4th 1017, 1050. Such a definition would mean that *Miranda* would be triggered by interrogation at any *detention*, contrary to the holdings in *Berkemer v. McCarty*, 468 U.S. 420, 436-440 (1984), and *Pennsylvania v. Bruder*, 488 U.S. 9, 10-11 (1988).

That the California Supreme Court was incorrect in basing its custody ruling on the police officer's evolving degree of suspicion follows from this Court's instruction that custody issues be determined on the basis of an objective, reasonable-person test, rather than "on the self-serving declarations of the police or the defendant." *Berkemer v. McCarty*, *supra*, 468 U.S. 420, 442, n.35. Since a reasonable person would not be privy to a police officer's unarticulated thoughts, the officer's subjective state of mind could hardly be relevant to the assessment of the degree of coercive restraint to which a reasonable person in the suspect's position would have felt himself subject. *Berkemer v. McCarty*, *supra*, 468 U.S. 420, 435, n.22.

The trial court found that petitioner voluntarily agreed to be interviewed, voluntarily accompanied police to the station, voluntarily answered questions, and was subjected to no restraints. On these facts, he could not reasonably have believed himself to be under formal arrest or its functional equivalent, and so *Miranda* was not implicated. The California Supreme Court's judgment is supported, on these facts, by the rulings in *Oregon v. Mathiason*, *supra*, 429 U.S. 492, and *California v. Beheler*, *supra*, 463 U.S. 1121. The California Supreme Court's unnecessary and improper discussion of other "factors" –

particularly subjective levels of suspicion unknowable to petitioner and so unable to exert compulsion on him to confess – should be clearly repudiated (again) for the benefit of police, attorneys and courts still haunted by *Escobedo*.

CONCLUSION

It is respectfully submitted that the judgment of the California Supreme Court should be affirmed on the basis of this Court's controlling precedents, and that the language of the California Supreme Court's opinions in the line of custody cases traceable from this opinion to *Escobedo v. Illinois* should be unmistakably disapproved insofar as they depart from this Court's pronouncement that custody is the functional equivalent of formal arrest, objectively measured.

DATED: December 13, 1993

Respectfully submitted,

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the
Supreme Court of the State of California

**BRIEF AMICUS CURIAE OF THE
CRIMINAL JUSTICE LEGAL FOUNDATION
IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

Can a suspect be in "custody" for the purpose of *Miranda v. Arizona* even though he has not been seized by the police prior to questioning?

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IN THE
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ROBERT EDWARD STANSBURY,

Petitioner,

vs.

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Respondent.

**BRIEF AMICUS CURIAE OF THE
CRIMINAL JUSTICE LEGAL FOUNDATION
IN SUPPORT OF RESPONDENT**

INTEREST OF AMICUS CURIAE

The Criminal Justice Legal Foundation (CJLF)¹ is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The present case involves a definition of custody for issuing *Miranda* warnings. Both petitioner's proposed rule and the standard used by the court below are unclear and unworkable, contrary to the rights of victims and society that CJLF was formed to advance.

1. Both parties have consented to the filing of this brief.

SUMMARY OF FACTS AND CASE

Robyn Jackson, age ten, was kidnapped, raped, and murdered on the night of September 28, 1982. Brief of Petitioner 2-3. She was last seen talking to an ice cream truck driver at a school playground near her home in the Baldwin Park area of Los Angeles, California. *People v. Stansbury*, 4 Cal. 4th 1017, 1032, 846 P. 2d 756 (1993). Lieutenant Thomas Johnston of the Baldwin Park Police Department took charge of the investigation and discovered that two ice cream truck drivers were working in the area that day, petitioner Robert Edward Stansbury and another man. *Id.*, at 1050-1051. Suspicion initially focused on the other driver, as he fit the description given by an adult witness who had seen Robyn with an ice cream vendor on the day she disappeared, while petitioner did not. *Id.*, at 1051.

Lt. Johnston asked four plainclothes Baldwin Park police officers not involved in the investigation to go to petitioner's home in Pomona and ask him if he would come to the Pomona police station to answer some questions as a witness. Petitioner readily agreed to accompany the officers and accepted their offer of transportation. He was not handcuffed and rode in the front seat with one of the officers. *Ibid.*

Petitioner was questioned by Lt. Johnston for 20 to 30 minutes, providing narrative answers to the questions posed. *Id.*, at 1052-1053. When petitioner said that he had left his home around midnight in a borrowed turquoise car, Lt. Johnston became suspicious, as a witness had seen Robyn's body being thrown from a turquoise colored sedan into a drainage canal in the early morning hours. Petitioner was asked whether he had a criminal record, and he admitted to prior convictions for rape, kidnapping, and child molestation. Lt. Johnston left the room to confer with other homicide investigators and upon his return advised petitioner of his constitutional rights. Petitioner then stated that he did not wish to make any further statements. *Id.*, at 1052.

The trial court ruled in an evidentiary hearing that petitioner was not in custody prior to his formal arrest. It was only when petitioner made reference to a turquoise automobile that suspicion focused on him, and the court suppressed statements made after that point. *Id.*, at 1052. Petitioner was then convicted of first degree murder, lewd act on a child under the age of 14, rape, and kidnapping and sentenced to death. *Id.*, at 1031.

On automatic appeal, the California Supreme Court upheld the trial court's findings that petitioner had not been in custody before he mentioned the turquoise car and that statements prior to his arrest were properly admitted into evidence. *Id.*, at 1054. The court affirmed the judgment in its entirety. *Id.*, at 1031.

SUMMARY OF ARGUMENT

The *Miranda* rule is easily stated: in order to admit evidence obtained as a result of custodial interrogation by the police, a suspect must first have been warned of his constitutional rights. Though clear, the cost is high; *Miranda* excludes some statements that would otherwise be admissible, solely because of the lack of a warning. This Court has reasoned that such costs are justified given the gains in efficiency and certainty that result from replacing a case-by-case voluntariness inquiry with a bright line rule. As a consequence, any interpretation of the limits of *Miranda*'s application must provide a simple and easily administered rule. Any other approach only increases its costs without providing any of its benefits.

An individual is in custody for the purposes of *Miranda* only if he has been seized by a law enforcement official. This does not mean that a person is in custody *whenever* he has been seized, but rather that seizure is a necessary condition of custody. Some seizures do not rise to the level of custody, but all custodial encounters must begin with restraint of the person's freedom of movement.

The factual findings by the court below amply demonstrate that defendant was not in custody when he made incriminating statements in response to questions put to him by the investigating officer. At no time prior to his formal arrest was defendant seized by the police. Moreover, even if defendant may have been seized during the initial encounter at his trailer, that seizure terminated long before questioning began.

ARGUMENT

I. Any definition of custody must draw a bright line.

A. *The Miranda Rule.*

Under the *Miranda* rule, the only inquiry when seeking to admit a statement made during custodial interrogation is whether or not the suspect was informed of his constitutional rights. Speculation about the facts and circumstances involved in the interrogation is irrelevant, as is the suspect's knowledge of his rights without a warning being given. *Miranda v. Arizona*, 384 U. S. 436, 468 (1966). Attempting to infer knowledge of one's rights from a person's age, education, intelligence, or previous experience with police is "no more than speculation; a warning is a clearcut fact." *Id.*, at 469 (footnote omitted).

The *Miranda* rule thus creates a mandatory, conclusive presumption. A custodial confession obtained without "adequate protective devices" is deemed "compelled," *id.*, at 457-458 and n. 26, regardless of how conclusive the evidence may be that the confession was, in fact, voluntary. Mandatory, conclusive presumptions are inimical to the search for truth, so much so that this Court has absolutely prohibited their use to establish an element of the offense, holding that such presumptions violate the Due Process Clause. *Sandstrom v. Montana*, 442 U. S. 510, 523 (1979); see also *Rose v. Clark*, 478 U. S. 570, 580 (1986) (purpose of *Sandstrom* to avoid conviction of the innocent).

Yet the people, as well as the defendant, are entitled to due process of law. *Stein v. New York*, 346 U. S. 156, 197 (1953), overruled on other grounds in *Jackson v. Denno*, 378 U. S. 368, 391 (1964). If mandatory, conclusive presumptions are to be invoked against the people at all, they should, at the very least, be limited to those situations where the fact presumed is highly likely to follow from the fact found. The definition of "custody" for *Miranda* should not be extended to situations where the inference of compulsion is substantially weaker than it is in the case of a station house interrogation following formal arrest. To expand the presumption to such situations would "discredit constitutional doctrines for protection of the innocent by making of them mere technical loopholes for the escape of the guilty." *Stein*, 346 U. S., at 196-197.

The rule of *Miranda* excludes some evidence that might otherwise be admitted, were the inquiry to focus on the voluntary nature of the statement rather than the existence or nonexistence of a warning. These voluntary (but unwarned) statements could be admitted without violating the commands of the Fifth Amendment. *Oregon v. Elstad*, 470 U. S. 298, 306 (1985). Yet for the sake of clarity, efficiency, and certainty, *Miranda*'s rule will not allow the admission of even voluntary statements without the requisite warnings. Requiring warnings in every case excludes "trustworthy and highly probative evidence even though the confession might be voluntary under traditional Fifth Amendment analysis." *Fare v. Michael C.*, 442 U. S. 707, 718 (1979). *Miranda* impairs the pursuit of truth by concealing probative information from the trier of fact. *Michigan v. Harvey*, 494 U. S. 344, 350 (1990); *Withrow v. Williams*, 123 L. Ed. 2d 407, 427, 113 S. Ct. 1745, 1759 (1993) (O'Connor, J., concurring and dissenting).

These are the costs of the *Miranda* doctrine. Its "crucial advantage" is that it is clear and specific. *Berkemer v. McCarty*, 468 U. S. 420, 430 (1984). The rule informs prosecutors and police what they may do during custodial

interrogations and instructs the courts as to when statements made during such encounters are properly admitted into evidence. *Michael C.*, 442 U. S., at 718. This gain benefits both the accused and, in some circumstances, the state and "has been thought to outweigh the burdens that the decision in *Miranda* imposes" *Ibid.*

The "trigger" for *Miranda* warnings is custodial interrogation, defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, *supra*, 384 U. S., at 444. In the most basic scenario, a person is arrested pursuant to a warrant and taken to the station house for questioning by police. The requirement for a warning is obvious. The arrestee is physically detained by the state and has every reason to believe that the interrogation will continue for some time, usually in direct proportion to answers supplied in response to the officer's questions. This is clearly custodial interrogation as envisioned by *Miranda*, and the arrestee must be warned of his constitutional rights.

Where the facts differ from this archetype, as in the present case, *Miranda*'s application is unclear. The question as yet unanswered is at what point and under what circumstances warnings are required before the fruits of interrogation can be admitted. In other words, what does "custody" mean? This Court has determined that a typical traffic stop is not custody, *Berkemer v. McCarty*, 468 U. S. 420, 440 (1984), that questioning in a police station house is not determinative of custody, *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977) (*per curiam*), and that voluntary cooperation with police investigation does not trigger the warning requirement, *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (*per curiam*). However, these cases have not yet clarified *Miranda*'s language requiring a warning when "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, *supra*, 384 U. S., at 444.

The cases subsequent to *Miranda* fail to provide a bright line for determination of when a suspect is in custody sufficient to require that he be warned of his constitutional rights. For persons who have been formally arrested, the analysis is simple and a warning is required. "[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Beheler*, *supra*, 463 U. S., at 1125 (quoting *Mathiason*, *supra*, 429 U. S., at 495). Before formal arrest, the line is indistinct and requires clarification by this Court.

B. The Value of a Bright Line.

Law enforcement officers interact with citizens in a multitude of disparate situations, ranging "from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life." *Terry v. Ohio*, 392 U. S. 1, 13 (1968). Encounters are initiated by the police for a variety of reasons and often change character as the interaction continues, becoming more or less hostile with the progress of the conversation. *Ibid.* Police officers are presented with this diversity and complexity and must make hurried decisions, but a wrong decision may result in death or serious injury to themselves or others.

The consequences to the administration of criminal justice are similarly high. An officer may determine that a *Miranda* warning is not necessary, perhaps because the person being questioned is not considered a suspect, and the information obtained is not likely to be needed in a judicial proceeding against that person. If the officer is mistaken and at trial the court excludes some or all of the statements, then the officer's decision not to "mirandize" could result in an admittedly guilty criminal being released into society. "When that happens, it is not just the executive or the judiciary but all of society that suffers . . . the populace again finds a guilty and potentially dangerous person in its midst, solely because a police officer bungled." *Withrow v.*

Williams, 123 L. Ed. 2d 407, 425, 113 S. Ct. 1745, 1758 (1993) (O'Connor, J., concurring and dissenting). Because of its importance, this is a decision that demands accuracy by the officer. Given the wide variety of interactions, a bright line rule is the only way in which this determination can be made with confidence and reliability.

In making its own determination, the trial court also requires a clear and easily applied rule. If the standard is not a bright line, then the court may decide the evidentiary matter improperly, resulting in the release of defendants who would be convicted upon a proper application of the standard. Generally, no appeal by the state can be taken to test the correctness of the trial judge's adverse ruling. Thus it is important to get it right the first time. The surest way to bring accuracy to this judgment is to establish a bright line rule.

This Court has frequently taken the opportunity to comment on the necessity for clarity in fashioning rules pursuant to the *Miranda* decision. See, e.g., *New York v. Quarles*, 467 U. S. 649, 658 (1984). Indeed, a litigant seeking to establish a case-by-case rule for determining custody bears a heavy burden. See *Berkemer v. McCarty*, 468 U. S. 420, 432 (1984) ("Absent a compelling justification we surely would be unwilling so seriously to impair the simplicity and clarity of the holding of *Miranda*."); see also *Moran v. Burbine*, 475 U. S. 412, 425-426 (1986) ("We are unwilling to modify *Miranda* in a manner that would so clearly undermine the decision's central 'virtue' of giving firm guidance to police and the courts.). At bottom, the costs of the rule itself must be justified by its benefit in deterring unlawful police conduct: "Any rule that so demonstrably renders truth and society 'the loser' 'bear[s]' a heavy burden of justification, and must be carefully limited to the circumstances in which it will pay its way by deterring official lawlessness." *Withrow v. Williams*, 123 L. Ed. 2d 407, 428, 113 S. Ct. 1745, 1760 (1993) (O'Connor, J., concurring and dissenting) (quoting *McNeil v. Wisconsin*,

115 L. Ed. 2d 158, 170, 111 S. Ct. 2204, 2210 (1991) and *United States v. Leon*, 468 U. S. 897, 908, n. 6 (1984)).

C. Defendant's Proposed Rule.

Defendant urges this Court to adopt the Eighth Circuit's nonexhaustive list of six factors for determining custody, found in *United States v. Griffin*, 922 F. 2d 1343, 1349 (1990):

"(1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning." Brief for Petitioner 19, quoting *Griffin*.

A more muddled definition of custody would be difficult to imagine. Police officers cannot possibly be expected to predict how a court would rule on such a test. In addition, two of the elements of this test are completely irrelevant to the issue of compulsion on which *Miranda* is based.

In *Oregon v. Mathiason*, 429 U. S. 492 (1977) (*per curiam*), an officer of the Oregon State Police asked Mathiason to meet with him to answer some questions about a recent burglary. *Id.*, at 493. Mathiason voluntarily appeared at the station house and confessed to involvement in the crime after the officer falsely stated that his fingerprints had been found at the scene. Mathiason was then informed of his constitutional rights and made a taped confession. *Id.*, at 493-494. The Oregon Supreme Court reversed his conviction, finding that the questioning took place in a "coercive environment" dominated by the police

and that such a setting was sufficient to require that *Miranda* warnings be given. *Id.*, at 494.

The United States Supreme Court reversed in a *per curiam* opinion, finding that "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' " *Id.*, at 495. Furthermore, the officer's false statement regarding incriminating forensic evidence has "nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Id.*, at 496. Yet defendant urges this Court to adopt a rule with "deceptive stratagems" as one of its factors, despite *Mathiason's* clear rejection of that factor as irrelevant.

Equally irrelevant is the sixth *Griffin* factor, arrest of the suspect at the end of the questioning. *Miranda* is concerned with compulsion. See part II.A., *post*, at 11-13. Unless the suspect is clairvoyant, events after he has made his statement cannot possibly have any relevance to whether it was compelled. Cf. *Berkemer v. McCarty*, 468 U. S. 420, 442 (1984) (unarticulated intent to arrest irrelevant).

Defendant thus asks the Court to adopt a test which lacks clarity and predictability and which turns on factors irrelevant to the concerns underlying the *Miranda* rule. Defendant's rule should be unequivocally rejected.

Miranda's singular virtue is its uniformity and clarity. Police know that they must give specific warnings before beginning custodial interrogation. Judges know that statements made during custodial interrogation cannot be admitted unless the police have given those warnings. Defining custody with a nonexhaustive, multifactored, case-by-case rule eliminates the virtue of *Miranda* and multiplies the costs of litigation. It is little different from the due process voluntariness test that *Miranda* sought to clarify. See *Withrow v. Williams*, 123 L. Ed. 2d 407, 420, 113 S. Ct. 1745, 1754 (1993). Indeed, the "most important[]" basis for the *Withrow* decision was the clarity of the *Miranda* rule,

and the *Withrow* Court asserted that *Miranda* is so clear that good faith disagreements between state and federal judges would not be "frequent." *Id.*, at 420-421, 113 S. Ct., at 1754-1755. Adoption of a fuzzy definition of "custody" would negate the basis of *Withrow* and require re-examination of that decision.

II. Seizure is a necessary but not sufficient requirement for custody.

A. *Miranda*, Compulsion, and Restraint.

Miranda must be read in light of the historical factors that motivated the decision, chiefly the experience of several decades of unsuccessful attempts to reform police interrogation techniques on a case-specific basis. State and local law enforcement officials proved unresponsive to repeated Court rulings that consistently overturned convictions because of aggressive investigative questioning. The Court noted, however, that by the time of the *Miranda* decision, contemporary police practice most commonly utilized psychological rather than physical coercion. *Miranda v. Arizona*, 384 U. S. 436, 448 (1966). Techniques such as false identification in a line up and days-long interrogation were offered as examples of common investigatory tactics. *Id.*, at 451-453. The Court also reviewed the facts of three recent decisions, concluding that "[i]n other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed." *Id.*, at 456.

Miranda attempted to address this problem of undue coercion by requiring warnings before admitting the fruits of custodial interrogation. The decision is firmly rooted in the plain text of the Fifth Amendment: "nor shall any person . . . be compelled in any criminal case to be a witness against himself" U. S. Const. Amdt. 5. Forcing a person to do that which he would otherwise avoid is the forbidden practice and the sole concern of the *Miranda*

decision. See *Withrow v. Williams*, 123 L. Ed. 2d 407, 417-418, 113 S. Ct. 1745, 1752 (1993) (warning requirement enacted in order to counter "compelling pressures" inherent in custodial interrogation). *Miranda* is only implicated when there is compulsion and a police-dominated atmosphere. *Illinois v. Perkins*, 496 U. S. 292, 296 (1990).

But *Miranda* does not ban all police questioning or exclude all confessions. To the contrary, the decision explicitly notes that confessions are an important element of many convictions. *Miranda*, *supra*, 384 U. S., at 481. When the confession might be based on a desire to end the interrogation rather than on a genuine desire to admit culpability, then the veracity of the admission is suspect. *Id.*, at 447 ("dangers of false confessions"). The link between confession and the end of questioning is obvious; the decision seeks to preserve the value of honest confessions by requiring warnings that break the causal connection between termination of interrogation and admission of guilt.

The essential predicate of the warning requirement, therefore, is the belief that "significant custodial restraints produce, in the mind of the suspect, a form of prohibited compulsion." Williamson, *The Virtues (and Limits) of Shared Values: The Fourth Amendment and Miranda's Concept of Custody*, 1993 U. Ill. L. Rev. 379, 404. It is the restraint of physical freedom and its concomitant psychological pressures that must form the basis of the definition of custody.

Subsequent cases testing the application of the decision support this idea. *Berkemer v. McCarty*, 468 U. S. 420 (1984) presented the issue of whether questioning during an ordinary traffic stop was custodial interrogation under *Miranda*. As Justice Marshall phrased the question in writing for a unanimous Court, "we must decide whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." *Id.*, at 437. The Court rejected the

idea that the officer's unarticulated plan to arrest the driver regardless of the answers given in response to questioning was determinative of custody, *id.*, at 442, again illustrating that the sole concern of *Miranda* is the psychological impact of physical restraint. See also *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (*per curiam*) ("[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with formal arrest."); *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977) (*per curiam*) ("[P]olice officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.").

The emphasis for custody must be on the degree of physical restraint.² As the Court noted in *Berkemer*, "[f]idelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." 468 U. S., at 437. As noted above, the sole concern of the decision was to avoid the coercion inherent when the state undertakes questioning after restricting a person's freedom of movement. If a person is free to choose whether to accompany police or not, then there is no need to warn him of his constitutional rights.

B. Seizure and Compulsion.

1. Seizure defined.

The latest and most thorough expression of the meaning of seizure under the Fourth Amendment is *California v. Hodari D.*, 113 L. Ed. 2d 690, 111 S. Ct. 1547 (1991).

2. Physical restraint is not limited to application of physical force. A command to halt or remain, if obeyed, is restraint of physical freedom, even though the individual may not ever be touched by the officer. See part II.B.1., *post*.

There, two police officers chased a fleeing minor through an urban area. One officer split off from the chase to cut off Hodari and confronted him in an alley. Hodari ran down the alley towards the officer, looking over his shoulder to see if the officers were pursuing from behind. He did not see the other officer until he was nearly upon him, at which point he tossed away what appeared to be a small rock. A moment later, the officer tackled Hodari, handcuffed him, and radioed for assistance. The rock was found to be crack cocaine. *Id.*, at 695, 111 S. Ct., at 1549.

The issue presented was whether Hodari had been seized when he dropped the drugs. *Ibid.* The state admitted that the officer lacked reasonable suspicion to seize Hodari, but argued that the seizure was effected only when he was tackled, making the rock of cocaine admissible as abandoned property. *Id.*, at 695-696 and n. 1, 111 S. Ct., at 1549 and n. 1. Had the seizure been effected at the time Hodari spotted the officer in front of him, the cocaine would be inadmissible as fruit of an illegal seizure. *Ibid.*

The Court found for the state, ruling that a seizure requires either physical force or submission to the assertion of authority. *Id.*, at 697, 111 S. Ct., at 1550. Restraint of liberty by mere display or show of authority does not amount to seizure. Unless the individual yields in response to that assertion, there can be no seizure, but no physical touching is required. *Ibid.* *Hodari D.* does not elaborate on what sorts of actions qualify as an "assertion of authority," but assumed for the sake of argument that the officer's pursuit qualified as a show of authority calling upon the youth to halt. *Ibid.*

Two terms before *Hodari D.*, the Court decided *Brower v. Inyo County*, 489 U. S. 593 (1989) which held that a driver was seized when the stolen car he was driving at excessive speeds crashed into a police roadblock, killing him. The Court ruled that a seizure requires a willful act, even though an unintended person is the object of the detention. See *id.*, at 596. A seizure occurs "only when

there is a governmental termination of freedom of movement through means intentionally applied." *Id.*, at 597 (emphasis in original).

The analogy offered by the Court is one where a parked and unoccupied police car slips its brake and pins a pedestrian against a wall. It may be a tort, but there is no constitutional violation, even if the state had a compelling interest in restraining the individual—for example if the passerby was a serial murderer in the process of running away from police officers. *Id.*, at 596. Because the police officers intended to cause Brower to stop, either on his own or by striking the roadblock, and he was so stopped "by the very instrumentality set in motion or put in place in order to achieve that result," he was seized. *Id.*, at 599.

Taken together, *Hodari D.* and *Brower* provide a clear definition of seizure. First, the police must intend to terminate an individual's freedom of movement through some means or instrumentality. Second, the individual must either be restrained by that method or comply with that assertion of authority. The person is seized only if both conditions are satisfied.

2. Compulsion and physical freedom.

Compel means "to necessitate or pressure by force." American Heritage Dictionary 385 (3d ed. 1992). The essence of compulsion is that an individual is convinced by the application of force to do that which he would ordinarily avoid. This pressure may be psychological, as in the case of prolonged detention with constant interrogation, or actual physical torture. *Miranda* itself recognized this typology and noted that psychological pressure is more common in modern police practice. *Miranda v. Arizona*, 384 U. S. 436, 448 (1966). Yet deception, even outright lying to the suspect, is not relevant to the custody analysis under *Miranda*. In *Oregon v. Mathiason*, 429 U. S. 492, 493 (1977) (*per curiam*) the state police officer falsely stated to the suspect that his fingerprints were found at the scene. The Court

held that this purposeful deception "has nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Id.*, at 496.

What becomes clear from the reading of *Miranda* with *Mathiason* is that the degree of restraint on physical freedom is the principal factor in assessing custody. See also *Berkemer v. McCarty*, 468 U. S. 420, 440 (1984) ("The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*.") *Miranda* defines custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise *deprived of his freedom of action* in any significant way." 384 U. S., at 444 (emphasis added).

Amicus suggests that as the definition of "seizure" has been sharpened by the Court under its Fourth Amendment jurisprudence to encompass only purposeful, effective assertions of authority, so too should the understanding of custody under *Miranda* embrace only those instances when a suspect has been seized, as defined in the Fourth Amendment cases. Without some manner of actual restraint on physical freedom, purposefully directed towards the suspect by the police, there can be no compulsion that rises to the level of a Fifth Amendment violation and hence no need for prophylactic *Miranda* warnings.

C. Beyond Seizure.

At least one class of citizen-police encounters is a seizure, yet not custody under *Miranda*: a traffic stop. Using the definition of seizure that includes submission to an assertion of authority, *Berkemer v. McCarty* nevertheless holds that a traffic stop is not custody and *Miranda* warnings need not be given. 468 U. S. 420, 440 (1984). A prior decision had determined that stopping a vehicle and detaining its occupants constitutes a Fourth Amendment seizure, even

though the detention is brief. *Delaware v. Prouse*, 440 U. S. 648, 653 (1979).

The two critical factors in the Court's analysis in *Berkemer* were duration and intimidation. First, the Court noted that the duration of the traffic stop is generally brief. Typical expectations are that the driver will be obliged to wait for a short period while the officer checks his license and registration and that a citation might issue. 468 U. S., at 437. This is very different from a custodial interrogation, which is frequently prolonged and in which the individual "often is aware that questioning will continue until he provides his interrogators the answers they seek." *Id.*, at 438.

Second, the attendant circumstances surrounding a typical traffic stop are such that the individual does not feel "completely at the mercy of the police." *Ibid.* The motorist is confronted, usually in a public area, with one or at most two officers asking questions. *Ibid.* The atmosphere is "substantially less 'police dominated' than that surrounding the kinds of interrogation at issue in *Miranda* itself and in the subsequent cases in which we have applied *Miranda*." *Id.*, at 439 (citation omitted).

The traffic stop cases demonstrate that the custody analysis only begins with finding seizure by the police. Something more is needed. Distilled to its essence, custody requires seizure plus some objective manifestations that the seizure is likely to continue for more than a brief period.³ No other definition, particularly that forwarded by defendant here, harmonizes the extant decisions in this area.

3. *Berkemer* suggests that the location of the encounter may carry some weight when determining whether the suspect was in custody. *Berkemer*, 468 U. S., at 438-439. To decide the present case, this Court need not resolve whether location can substitute for duration as the "plus factor," because there was no seizure. However, location by itself was deemed insufficient for custody in two prior decisions. See *Oregon v. Mathiason*, 429 U. S. 492, 495 (1977) (*per curiam*); *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (*per curiam*).

Seizure thus states a necessary but not sufficient condition for custody. Cf. *California v. Hodari D.*, 113 L. Ed. 2d 690, 698, 111 S. Ct. 1547, 1551 (1991) (holding that a reasonable person's belief that he is not free to leave is a necessary but not sufficient condition for seizure). An individual is in custody only if he has been seized, but not all seizures amount to custody, for example a traffic stop.

Stated in this way, it becomes apparent that the seizure of an individual can end, lifting the compulsion inherent in the police-citizen encounter and obviating the requirement for a *Miranda* warning. The end of the seizure is the end of a necessary precondition for requiring warnings. If the seizure is terminated before questioning begins, then the fruits of those questions are admissible without a warning. *Miranda* is not implicated in that factual setting.

Regardless of the definition of custody, a defendant can always argue that a statement was taken involuntarily and hence its admission violates the Fourteenth Amendment's Due Process Clause. See *Withrow v. Williams*, 123 L. Ed. 2d 407, 420, 113 S. Ct. 1745, 1754 (1993). The burden will be on the state to demonstrate otherwise and admit the evidence. *Lego v. Twomey*, 404 U. S. 477, 489 (1972). But if the suspect is not seized at the moment questioning begins, *Miranda* simply does not require the suspect to be warned of his constitutional rights, as it only applies to custodial interrogation.

III. Defendant was not seized and therefore not in custody during questioning by officers.

Several facts are relevant to the custody analysis. First, defendant came along with the police officers voluntarily. As the California Supreme Court specifically found, Officer Lee had been told to treat defendant as a witness and requested that he accompany them to the station house. *People v. Stansbury*, 4 Cal. 4th 1017, 1051, 846 P. 2d 756,

775 (1993). The court below also found that defendant was very cooperative and agreed to come to the station house for the express purpose of answering questions. *Id.*, at 1051, 846 P. 2d, at 776. He was given the choice to drive himself, but elected instead to accept the offer of a ride with Officer Lee. *Ibid.* Defendant was under no restraint during the trip and sat in the front seat of the police cruiser with Officer Lee. *Ibid.*

Defendant paints a far different portrait in his opening brief, one that is at odds with the facts as found by the court below. Defendant repeatedly states that he was confronted late at night by four officers, each of whom had his gun drawn and in a ready position. See Brief for Petitioner 20-22. This characterization directly conflicts with the factual finding that "[t]here is no evidence defendant saw the guns." *Stansbury, supra*, 4 Cal. 4th, at 1053, 846 P. 2d, at 777. Defendant admits that he did not challenge the officers' description of the circumstances under which he was picked up and interrogated. Brief for Petitioner 10. Thus it is irrelevant whether the officers had their guns drawn, cocked, and pointing at defendant's head (which they did not); the "only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U. S. 420, 442 (1984). Since the fact as found below is that defendant could not see any of the officers' weapons, the drawing of the weapons is irrelevant to the custody analysis.

Second, defendant's largely narrative responses during his interview with Lieutenant Johnston indicate that he was not seized at that time. As the California Supreme Court noted, "the form of questioning at defendant's interview was not accusatory; the investigating officer simply asked defendant, a potential witness, to describe his movements and observations." *Stansbury, supra*, 4 Cal. 4th, at 1053, 846 P. 2d, at 777. The court also indicated that this was not a case where the officer confronted the suspect with evidence

against him or asked for his cooperation in lieu of immediate arrest. *Ibid.*

This factual finding contrasts sharply with the facts in *Oregon v. Mathiason*, 429 U. S. 492 (1977) (*per curiam*). There, the suspect voluntarily appeared at the station house and was escorted into an office. The door was closed behind him. The officer then accused the suspect of involvement in the crime and falsely stated that his fingerprints had been found at the scene. *Id.*, at 493. The Court concluded that there was no need for *Miranda* warnings because it was "clear from these facts that Mathiason was not in custody," and held that the officer's deceptive stratagem "has nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Id.* at 495-496.

Defendant, like Mathiason, voluntarily went along with the police to the station house and made no effort to leave. Defendant was not accused of involvement, nor did the interviewing officer fabricate evidence to coerce cooperation. *People v. Stansbury*, 4 Cal. 4th, at 1053, 846 P. 2d, at 777; Brief for Petitioner 6-7 n. 3, 8-9. Even if Lt. Johnston had lied to defendant, that would not be a factor for determining custody. *Mathiason*, *supra*, 429 U. S., at 496; see also *Illinois v. Perkins*, 496 U. S. 292, 297 (1990) ("*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust . . ."); *Moran v. Burbine*, 475 U. S. 412, 423-424 (1986) (deliberate withholding of information, while objectionable as an ethical matter, does not necessarily violate *Miranda*).

Defendant's final contentions are that he was questioned in a secure area of the jail, that he was never informed that he was free to terminate the interview, and the fact that he was arrested at the conclusion of the interview further demonstrates that he was in custody. Brief for Petitioner 23-27.

Location is not a factor for determining seizure. This Court specifically rejected location in *Mathiason*, *supra*, 429 U. S., at 495: "Nor is the requirement of warnings to be

imposed simply because the questioning takes place in the station house" The Court rejected the Oregon Supreme Court's use of a "coercive environment" test, holding that any interview with the police will have some coercive aspects to it, simply by virtue of the authority of the law enforcement system. *Ibid.* Other cases have also found an absence of custody even though the suspect was questioned at the police station house. See, e.g., *California v. Beheler*, 463 U. S. 1121, 1125 (1983) (*per curiam*).

Failure to warn the suspect that he is free to terminate the interview is also unimportant for seizure analysis. The question confronting the investigating officers is whether to issue *Miranda* warnings or not. Whatever bright line virtues exhibited by the *Miranda* doctrine remain, see *Withrow v. Williams*, 123 L. Ed. 2d 407, 432, 113 S. Ct. 1745, 1764 (1993) (O'Connor, J., concurring and dissenting), a rule that makes the issuing of warnings dependent on whether a "mini-*Miranda*" warning was given would be illogical and unworkable in the extreme.

Finally, the post-interview consequences have no relevance to the determination of custody. Defendant claims that "the subsequent arrest colors what went before" and argues that the arrest should serve as an indicium of custody. Brief for Petitioner 27. This is a surprising position, particularly in light of petitioner's claim some three pages before that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Id.*, at 24 (citing *Berkemer*, 468 U. S., at 422). Defendant's latter contention is quite correct and is a verbatim exposition of language from the *Berkemer* decision. To conclude, however, that a reasonable person's mental state at the time of questioning is dependent on an event that occurs some time after questioning has finished is absurd.

Defendant was not seized while offering narrative answers to Lt. Johnston's questions. He was neither physically forced nor verbally commanded to go to or remain in the police station. Therefore, defendant was not subject

to custodial interrogation and the failure to warn him of his constitutional rights does not render those statements inadmissible.

CONCLUSION

The judgment of the California Supreme Court should be affirmed.

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Respectfully submitted,

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